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HOUSE OF REPRESENTATIVES
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SPEAKER OF THE HOUSE

Monday, April 3rd, 2023

Testimony of Speaker Rachel Talbot Ross presenting
***LD 168, An Act Regarding Criminal Background Checks for the Sale,
Transfer or Exchange of Firearms***
Before the Joint Standing Committee on Criminal Justice & Public Safety

Senator Beebe-Center, Representative Salisbury and esteemed members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Rachel Talbot Ross. I represent House District 118 which is the Portland neighborhoods of Parkside, Bayside, East Bayside, Oakland and the University of Southern Maine Campus and I also have the distinct honor of serving as the Maine Speaker of the House. I am here today to present **LD 168, An Act Regarding Criminal Background Checks for the Sale, Transfer or Exchange of Firearms.**

LD 168, as amended, is written, and intended to protect the public safety and welfare of Maine people and others who are the victims of gun violence or other criminal activity that involves firearms, and those, often our youngest residents, who are suffering and contemplating suicide. Guns purchased through private sales in Maine, without background checks of any kind that could disqualify a person from purchasing that weapon from a federally licensed dealer, decrease our public safety and wreak havoc in our communities as well as in other states and countries. LD 168 can change that.

Regardless of where one gets their news, from watching television, listening to the radio, in print, or online, rarely a day goes by that we do not learn about senseless gun violence, the use of guns in the commission of crimes, or another mass shooting. Just this past Friday, the Kennebec Journal published an article about the deadliest mass shooting that ever occurred in Canada. The shooting took place in Nova Scotia on April 19, 2020. Gabriel Wortman killed 22 people and injured three others before he was shot and killed by police. Why am I talking about that case? Because Mr. Wortman obtained three of the guns used in those shootings in Maine before illegally bringing them across the United States/Canadian border in Houlton. One of the guns, a Colt Carbine semi-automatic weapon, was purchased through a private sale at a gun show in Houlton. Two others were obtained through a private transfer from a friend who resided in Maine. All those

District 118: Portland neighborhoods of Parkside, Bayside, East Bayside, Oakdale and the University of Southern Maine Campus

weapons were obtained and transferred without a single background check. All the transfers to Mr. Wortman were illegal as he was not a United States resident. A simple background check would have prevented those sales and transfers but were not required under Maine law.

While LD 168 will not eradicate gun violence or suicide by firearm, it will decrease the number of deadly weapons being placed in the hands of people with extensive criminal records or serious mental health issues through unchecked private sales or transfers. Licensed dealers are not permitted to make those sales or facilitate those transfers without conducting background checks. LD 168 closes the gaping loophole that exempts private sales and transfers of firearms from a parallel requirement to conduct background checks.

LD 168 will help stop people from out-of-state buying crime guns in Maine and then transporting them to other states, often states with laws mandating universal background checks for all private sales and transfers. For example, Massachusetts, with limited exceptions, requires universal background checks. Because Maine does not, we are an attractive source for persons from Massachusetts, and other states with universal background checks, to purchase firearms that they otherwise could not purchase in their home state due to their criminal history or other disqualifying factors.

According to the Giffords organization, which is led by former Congresswoman Gabrielle Giffords who was a victim of gun violence, roughly 80% of guns used in criminal activity are obtained from private sellers in states like Maine that do not require background checks. From 2017 through 2021, 4,594 crime guns were bought in Maine, 65% of which were found in other states. Those weapons were obtained through private sales and sometimes through online purchases.

To date, 21 other states have enacted some variation of commonsense laws requiring universal background checks to increase public safety. A 2021 poll conducted by the Giffords Legal Center found that 70% of Mainers support universal background checks, including 63% of gun owners. A majority of Democrats, Republicans, and gun owners believe background checks should be required any time a gun is sold or transferred to a new owner. However, as other states enact these laws, states without them, like Maine, remain outliers and will only become greater source states for crime guns. LD 168 can help us follow the will of Maine voters and stop Maine from being a destination for the procurement of firearms used to harm others through criminal activity.

You have already received written testimony from Dr. Amy Buczkowski on behalf of the Maine Chapter of the American Academy of Pediatrics. Dr. Buczkowski describes

the tragic connection between the absence of background checks for the private sale and transfer of firearms and suicide in Maine. She reports that almost 5,000 Maine high school students attempted suicide in 2021 and that 56% of all suicides in Maine that year involved the use of a firearm. Dr. Buczkowski noted that private sales unaccompanied by a required background check provide a loophole for young people who could not buy firearms from dealers who are federally licensed. LD 168 can close that loophole and save the lives of people in distress. Passing LD 168 can also help prevent the tragedy of suicide and protect families from having to grieve the loss of loved ones.

LD 168, as amended, does not burden gun dealers with the requirement to conduct a federal background check on their own. **Rather, it provides an option for the buyer to obtain a background check from a local law enforcement agency instead of a federally licensed firearm dealer when purchasing the firearm from a private seller.** Earlier iterations of this bill in prior legislative sessions did not include this option. The bill also provides an exception when the buyer and seller are family members and exempts certain transactions set out in Section 4. Those exemptions include the sale and transfer of curio, relic, and antique firearms as defined in the Code of Federal Regulations, and in instances when the buyer or seller is a state or federal law enforcement officer, corrections officer, military personnel, or a licensed security guard. **LD 168, as amended, also does not create a new crime, as violations are civil in nature with a maximum fine of \$1,000.00.**

Lastly, you may hear testimony today from persons claiming that LD 168, if enacted, would violate both the Second and Fourteenth Amendments to the United States Constitution. That is simply not true. As the United States Supreme Court has repeatedly stated, most recently in its 2022 decision in *Bruen*, those amendments protect the rights of *law-abiding responsible adult citizens*. Background checks do not violate those rights. Background checks are already required for firearm transactions conducted by federally licensed dealers and are constitutional. LD 168 simply extends that requirement to persons who transact or facilitate private unlicensed transactions of firearms. If enacted, LD 168 will withstand a constitutional challenge.

I urge you to support LD 168. Thank you very much for your time and attention this afternoon and I am happy to answer any questions you have.

An Act Regarding Criminal Background Checks for the Sale, Transfer or Exchange of Firearms

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

Sec. 1. 15 MRSA §394 is enacted to read:

§394. Criminal background checks of firearms buyers

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

A. "Buyer" means a person that, after a sale, transfer or exchange, is the owner of the firearm subject to the sale, transfer or exchange.

B. "Family member" means a spouse, domestic partner, parent, stepparent, foster parent, child, stepchild, foster child or any other person related by consanguinity up to the 2nd degree. For purposes of this paragraph, "domestic partner" has the same meaning as in Title 1, section 72, subsection 2-C.

C. "Federally licensed firearms dealer" or "dealer" means a person who is licensed or is required to be licensed as a dealer under 18 United States Code, Section 923.

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

E. "Seller" means a person that, after a sale, transfer or exchange, is no longer the owner of the firearm subject to the sale, transfer or exchange.

F. "Sell, transfer or exchange" or "sale, transfer or exchange" means any transaction in which ownership of a firearm changes.

2. Requirement. If neither the seller nor buyer of a firearm is a federally licensed firearms dealer, the transaction must be facilitated by such a dealer. ~~The dealer shall perform a criminal background check using the Federal Bureau of Investigation, National Instant Criminal Background Check System of the buyer in the same manner as if the dealer were the seller of the firearm that is the subject of the transaction. If the criminal background check reveals that the buyer is prohibited from purchasing a firearm, the dealer shall notify the seller of that fact. The dealer may charge a reasonable fee for serving as the facilitator.~~ A dealer who agrees to facilitate a firearm sale, transfer or exchange pursuant to this section shall comply with all requirements of State and federal law and shall, unless otherwise expressly provided in this section, conduct the sale, transfer or exchange in the same manner as the dealer would if selling the firearm from their own inventory, but shall not be considered a vendor.

The option shall permit a buyer to obtain a background check from a law enforcement agency rather than a federally licensed firearms dealer when purchasing the firearm from a private seller instead of a dealer.

3. Limitations. This section applies only to transactions in which:

A. A federally licensed firearms dealer or a private seller offers to sell, transfer or exchange a firearm at a gun show, event or function:

(1) The purpose of which is to facilitate the sale, transfer or exchange of firearms;

(2) At which 3 or more dealers or sellers of firearms offer firearms for sale, transfer or exchange; and

(3) At which 25 or more firearms are offered for sale, transfer or exchange; or

131st Maine Legislature

An Act Regarding Criminal Background Checks for the Sale, Transfer or Exchange of Firearms

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~~B. Pursuant to an advertisement, posting, display or other listing on the Internet or in a publication, the dealer or seller offers to sell, transfer or exchange, or indicates an intent to sell, transfer or exchange, a firearm.~~

4. Exemptions. The provisions of this section do not apply to a sale, transfer or exchange of a firearm between persons who are not federally licensed firearms dealers if:

A. The firearm is a curio or relic, as defined in 27 Code of Federal Regulations, Section 478.11 as in effect on November 19, 2019, and the sale, transfer or exchange is between collectors of firearms as curios or relics, as defined by 18 United States Code, Section 921(a)(13) as in effect on June 25, 2022, who both have in their possession a valid collector of curios and relics license issued by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

B. The sale, transfer or exchange is of an antique firearm, as defined in 18 United States Code, Section 921(a)(16) as in effect on June 25, 2022;

C. The buyer or seller is a law enforcement agency or the Department of Corrections;

D. To the extent the buyer or seller is acting within the course of that person's employment or official duties, the person is:

(1) A law enforcement officer as defined by Title 17-A, section 2, subsection 17;

(2) A corrections officer as defined by Title 25, section 2801-A, subsection 2;

(3) A member of the United States Armed Forces;

(4) A member of the National Guard;

(5) A member of the Reserves of the United States Armed Forces;

(6) A federal law enforcement officer; or

(7) A person licensed as a security guard under Title 32, chapter 93 or employed by a contract security company or proprietary security organization under Title 32, chapter 93; or

E. The buyer and seller are family members.

5. Violations. A person who knowingly sells, transfers or exchanges a firearm in violation of this section commits:

A. For a sale, transfer or exchange of one or more firearms that is the person's first violation of this section, a civil violation for which a fine of not more than \$1,000 may be imposed; and

B. For a sale, transfer or exchange of one or more firearms when at the time of the offense the person has one or more convictions for a violation of this section or a comparable conviction under the laws of another jurisdiction, a Class D crime.

SUMMARY

This bill requires criminal background checks of buyers of firearms for private sales, transfers or exchanges ~~at gun shows or private sales, transfers or exchanges resulting from advertising or marketing~~ subject to certain exceptions. The bill provides that the first offense for knowingly selling, transferring or exchanging a firearm in violation of the criminal background check required by this bill is a civil violation for which the penalty is a fine of up to \$1,000. ~~The bill designates subsequent offenses as Class D crimes.~~