

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1662

I.B. 5

House of Representatives, March 17, 2016

An Act To Require Background Checks for Gun Sales

Transmitted to the Clerk of the 127th Maine Legislature by the Secretary of State on March 15, 2016 and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 25 MRSA §2014** is enacted to read:

3 **§2014. Background checks for firearms sales and transfers**

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

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

7 B. "Family member" means husband, wife, domestic partner, parent by blood, parent
8 by adoption, child by blood, child by adoption, sibling by blood, sibling by adoption,
9 grandparent, grandchild, niece, nephew, aunt, uncle, first cousin, father-in-law,
10 mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather,
11 stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister or
12 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 who holds any federal firearms license under 18
15 United States Code, Section 923(a) (2015).

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. "Sell" has the same meaning as in Title 17-A, section 554-A, subsection 1,
25 paragraph C.

26 J. "Transfer" has the same meaning as in Title 17-A, section 554-A, subsection 1,
27 paragraph A.

28 K. "Transferee" means a person who receives or intends to receive a firearm in a sale
29 or transfer.

30 L. "Transferor" means a person who delivers or intends to deliver a firearm in a sale
31 or transfer.

32 M. "Unlicensed person" means any person who is not a firearm dealer under this
33 section.

34 **2. Background checks required for all sales and transfers.** Except as provided in
35 subsection 8, each sale or transfer of a firearm occurring in whole or in part in this State
36 between unlicensed persons must be preceded by a background check on the transferee,
37 and an unlicensed person may not sell or transfer a firearm and an unlicensed person may
38 not receive a firearm without complying with the process described in this section.

1 **3. Background check conducted by firearm dealer.** When both parties to a
2 prospective sale or transfer of a firearm are unlicensed persons, the transferor and
3 transferee shall meet jointly at a firearm dealer and request that the firearm dealer
4 facilitate the sale or transfer. A firearm dealer who agrees to facilitate a sale or transfer
5 under this section shall process the sale or transfer as though selling or transferring the
6 firearm from its own inventory to the transferee, complying with all requirements of
7 federal and state law that would apply if it were making such a sale or transfer, including
8 all background check and record-keeping requirements.

9 **4. No sale or transfer if failed background check.** Neither a firearm dealer nor a
10 transferor may deliver any firearm to a transferee if the results of the background check
11 pursuant to subsection 3 indicate that the transferee is disqualified to possess firearms
12 under state or federal law.

13 **5. Leaving dealer with firearm.** Notwithstanding any other provision of law:

14 **A.** This section does not prevent the transferor from removing the firearm from the
15 premises of the firearm dealer while a background check is being conducted pursuant
16 to subsection 3. Before the transferor sells or transfers the firearm to the transferee,
17 the parties must return to the firearm dealer, who shall take possession of the firearm
18 in order to complete the sale or transfer; and

19 **B.** This section does not prevent the transferor from removing the firearm from the
20 premises of the firearm dealer if the results of the background check pursuant to
21 subsection 3 indicate that the transferee is disqualified to possess firearms under state
22 or federal law.

23 **6. Reasonable fee.** A firearm dealer who agrees to facilitate a sale or transfer
24 pursuant to this section may charge a reasonable fee for services rendered.

25 **7. Completion of forms.** A transferor and a transferee must each complete, sign and
26 submit all federal and state forms necessary to process the background check and
27 otherwise complete the sale or transfer pursuant to this section.

28 **8. Exceptions.** The provisions of this section apply to the transfer or sale of a
29 firearm between unlicensed persons except if:

30 **A.** The sale or transfer is between family members;

31 **B.** The firearm is a curio or relic, as defined in 27 Code of Federal Regulations,
32 Section 478.11 (2015), and the sale or transfer is between collectors of firearms as
33 curios or relics, as defined by 18 United States Code, Section 921(a)(13) (2015), who
34 both have in their possession a valid collector of curios and relics license issued by
35 the federal Bureau of Alcohol, Tobacco, Firearms and Explosives;

36 **C.** The sale or transfer is of an antique firearm, as defined in 18 United States Code,
37 Section 921(a)(16) (2015);

38 **D.** The transfer is temporary and is necessary to prevent imminent death or great
39 bodily harm, and:

40 **(1)** The transfer lasts only as long as necessary to prevent such threat; and

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

4 E. Either the transferor or the transferee is a law enforcement agency or the
5 Department of Corrections or is, to the extent the person is acting within the course of
6 the person's employment or official duties, a peace officer, a law enforcement officer,
7 a corrections officer, a member of the Armed Forces of the United States or the
8 National Guard or the Reserves of the United States Armed Forces, a federal law
9 enforcement officer or a person licensed as a security guard or employed by a
10 contract security company or proprietary security organization under Title 32, chapter
11 93;

12 F. The transfer is temporary, the transferor has no reason to believe that the
13 transferee intends to use the firearm in the commission of a crime and the transfer and
14 the transferee's possession of the firearm take place exclusively:

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

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

21 (3) While the transferee is hunting or trapping if such activity is legal in all
22 places where the transferee possesses the firearm and the transferee holds any
23 license or permit required for such activity; or

24 (4) In the actual presence of the transferor.

25 Any transfer allowed by this paragraph is permitted only if the transferor has no
26 reason to believe that the transferee is disqualified to possess firearms under state or
27 federal law or, if the transferee is under 18 years of age and is receiving the firearm
28 under direct supervision and control of an adult, that such adult is disqualified to
29 possess firearms under state or federal law; or

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

33 **9. Violations.** Any person who knowingly delivers or receives a firearm without
34 complying with this section commits:

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

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

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SUMMARY

This initiated bill requires a background check before a firearm sale or transfer between individuals not licensed as firearm dealers. If neither party to a sale or transfer has a federal firearms license, the parties meet at a licensed firearm dealer, who conducts a background check on the transferee and completes the sale or transfer as though selling or transferring from the dealer's own inventory. Exceptions to the background check requirement are made for transfers between family members, while the parties are hunting or sport shooting, for emergency self-defense, in the presence of the transferor and in other circumstances.