

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 168

H.P. 109

House of Representatives, January 13, 2023

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

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

Handwritten signature of Robert B. Hunt in cursive script.

ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.
Cosponsored by Representative: SALISBURY of Westbrook.

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

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

3 **§394. Criminal background checks of firearms buyers**

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

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

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

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

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

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

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

19 **2. Requirement.** If neither the seller nor buyer of a firearm is a federally licensed
20 firearms dealer, the transaction must be facilitated by such a dealer. The dealer shall
21 perform a criminal background check using the Federal Bureau of Investigation, National
22 Instant Criminal Background Check System of the buyer in the same manner as if the dealer
23 were the seller of the firearm that is the subject of the transaction. If the criminal
24 background check reveals that the buyer is prohibited from purchasing a firearm, the dealer
25 shall notify the seller of that fact. The dealer may charge a reasonable fee for serving as
26 the facilitator.

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

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

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

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

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

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

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

39 A. The firearm is a curio or relic, as defined in 27 Code of Federal Regulations, Section
40 478.11 as in effect on November 19, 2019, and the sale, transfer or exchange is between

1 collectors of firearms as curios or relics, as defined by 18 United States Code, Section
2 921(a)(13) as in effect on June 25, 2022, who both have in their possession a valid
3 collector of curios and relics license issued by the United States Department of Justice,
4 Bureau of Alcohol, Tobacco, Firearms and Explosives;

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

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

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

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

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

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

13 (4) A member of the National Guard;

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

15 (6) A federal law enforcement officer; or

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

19 E. The buyer and seller are family members.

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

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

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

28 **SUMMARY**

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