

# HOUSE BILL No. 1163

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-30-2-151.3; IC 35-31.5-2-210.5; IC 35-47.

**Synopsis:** Background checks at gun shows. Requires a person wishing to sell, trade, or transfer a firearm at a gun show to transact the sale, trade, or transfer through a firearms dealer (dealer). Specifies certain exemptions. Requires a dealer to complete the sale, trade, or transfer of a firearm if the following conditions are met: (1) The dealer agrees to transact the sale, trade, or transfer of the firearm. (2) The dealer is able to successfully contact the National Instant Criminal Background Check System (NICS). (3) The dealer receives authorization from NICS to complete the sale, trade, or transfer of the firearm. (4) The recipient of the firearm being sold, traded, or transferred: (A) is not otherwise prohibited from possessing a firearm under federal or state law; and (B) is in compliance with all federal and state laws pertaining to the possession and transfer of certain firearms as defined under the National Firearms Act (NFA firearm), if applicable. Allows a dealer to refuse to transact the sale, trade, or transfer of a firearm for any reason. Requires a dealer to abort the sale, trade, or transfer of a firearm when: (1) the seller of the firearm; (2) the intended recipient of the firearm; or (3) both; are not eligible to possess a firearm or an NFA firearm, as applicable. Requires a dealer to abort the sale, trade, or transfer of a firearm if the firearm to be sold, traded, or transferred is: (1) reported lost; (2) reported stolen; or (3) used in the commission of a crime. Provides that a dealer is not required to return payment issued to the dealer for the dealer's role in transacting the sale, trade, or transfer of a firearm in certain instances. Provides a dealer with immunity from civil liability and damages in certain instances. Provides that a person who knowingly or intentionally makes a  
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**Effective:** July 1, 2021.

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## Olthoff

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January 7, 2021, read first time and referred to Committee on Public Policy.

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## Digest Continued

materially false statement to a dealer for the purpose of completing a sale, trade, or transfer of a firearm commits firearm transfer fraud, a Level 6 felony. Enhances the offense to a Level 5 felony if the person has a prior unrelated conviction for the offense. Provides that a dealer or person who transacts a sale, trade, or transfer of a firearm in violation of certain requirements commits unlawful transfer of a firearm, a Level 6 felony. Provides that the offense is a Level 5 felony if the dealer or person has a prior unrelated conviction for the offense. Requires gun show organizers and operators to provide signage and written notice concerning required National Instant Criminal Background Checks. Specifies certain defenses. Defines certain terms. Makes conforming amendments.



Introduced

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in *this style type*, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1163

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-30-2-151.3 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2021]: **Sec. 151.3. IC 35-47-2.5-4.5**  
4 **(Concerning the sale, trade, and transfer of firearms by firearms**  
5 **dealers).**

6 SECTION 2. IC 35-31.5-2-210.5, AS ADDED BY P.L.66-2016,  
7 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2021]: Sec. 210.5. "NFA firearm", for purposes of  
9 **IC 35-47-2.5-4.5 and IC 35-47-8.5**, has the meaning set forth in  
10 IC 35-47-8.5-1.

11 SECTION 3. IC 35-47-1-6.5 IS ADDED TO THE INDIANA CODE  
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2021]: **Sec. 6.5. "NFA firearm" has the meaning set forth in**  
14 **IC 35-47-8.5-1.**

15 SECTION 4. IC 35-47-2.5-4.5 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2021]: **Sec. 4.5. (a) This section does not**  
 3 **apply to:**

4 (1) a law enforcement officer acting within the scope of the  
 5 officer's official duties;

6 (2) active duty members of the armed forces of the United  
 7 States acting within the scope of their official duties;

8 (3) any action or activity described in IC 35-47-10-1(b);

9 (4) the temporary transfer of a firearm to another person:

10 (A) while at a shooting range (as defined in  
 11 IC 14-22-31.5-3);

12 (B) for the purpose of providing or receiving instruction  
 13 during a firearms instructional course; or

14 (C) for the purpose of engaging in a legal hunting activity;

15 (5) the receipt of a firearm by a gunsmith or armorer for the  
 16 purpose of repair or modification;

17 (6) the receipt, possession, or transfer of a firearm by a person  
 18 who is:

19 (A) required to carry, handle, or transport a firearm as a  
 20 result of a commercial or professional responsibility; and

21 (B) acting within the scope of the person's commercial or  
 22 professional responsibilities at the time of the person's  
 23 receipt, possession, or transfer of the firearm; or

24 (7) a dealer who is selling, trading, or transferring a firearm  
 25 to another dealer.

26 (b) A person who wishes to sell, trade, or transfer a firearm to  
 27 another person at a gun show must:

28 (1) transact the sale, trade, or transfer through a dealer; and

29 (2) provide the dealer with:

30 (A) the name, date of birth, and residential address of the  
 31 seller of the firearm;

32 (B) the name, date of birth, and residential address of the  
 33 recipient of the firearm; and

34 (C) any other information required by:

35 (i) Form 4473 completed under section 3 of this chapter;  
 36 or

37 (ii) the dealer;

38 for the purpose of submitting the respective identities of  
 39 the seller and recipient to NICS.

40 (c) A dealer must do the following before transacting any sale,  
 41 trade, or transfer of a firearm between private parties:

42 (1) Successfully contact NICS.



1           (2) Receive authorization from NICS to complete the  
2 requested sale, trade, or transfer of the firearm before  
3 performing the requested sale, trade, or transfer.

4           (3) Comply with all applicable federal laws concerning the  
5 requested sale, trade, or transfer of a firearm.

6           (d) A dealer may:

7               (1) charge a fee for the dealer's role in transacting the sale,  
8 trade, or transfer of a firearm; and

9               (2) refuse to transact the sale, trade, or transfer of a firearm  
10 for any reason.

11           If a dealer refuses to transact a sale, trade, or transfer of a firearm,  
12 the dealer must provide to the prospective recipient and  
13 prospective seller a written explanation for the dealer's refusal to  
14 transact the requested sale, trade, or transfer. A fee charged under  
15 this subsection may not exceed twenty-five dollars (\$25).

16           (e) Except as provided in subsections (f), (g), (h), and (i), a  
17 dealer who refuses to transact the sale, trade, or transfer of a  
18 firearm under subsection (d) must do the following:

19               (1) As soon as practicable, inform the seller and intended  
20 recipient of the firearm of the dealer's decision not to transact  
21 the sale, trade, or transfer of the firearm.

22               (2) Return any fee originally charged by the dealer for the  
23 dealer's role in transacting the sale, trade, or transfer of the  
24 firearm to the appropriate party or parties.

25               (3) Return the firearm to be sold, traded, or transferred to the  
26 seller if:

27                   (A) the firearm is in the dealer's control or possession at  
28 the time the dealer refuses to transact the sale, trade, or  
29 transfer; and

30                   (B) the seller is not otherwise prohibited under federal or  
31 state law from possessing a firearm or an NFA firearm, as  
32 applicable.

33           (f) A dealer who discovers that the seller of a firearm is not  
34 eligible, under federal or state law, to possess a firearm or an NFA  
35 firearm, as applicable, must:

36               (1) comply with subsection (e)(1);

37               (2) maintain custody of the firearm;

38               (3) surrender the firearm to the nearest police department or  
39 law enforcement agency not later than twenty-four (24) hours  
40 after learning of the seller's inability to possess the firearm or  
41 NFA firearm, as applicable; and

42               (4) comply with all applicable federal laws concerning the



1           **transfer of a firearm.**

2           **A dealer who is unable to transact the sale, trade, or transfer of a**  
 3           **firearm due to the inability of the seller to possess a firearm or an**  
 4           **NFA firearm, as applicable, is not required to return any fee**  
 5           **originally charged to the seller for the dealer's role in the**  
 6           **attempted transaction.**

7           **(g) A dealer who discovers that the intended recipient of a**  
 8           **firearm is not eligible, under federal or state law, to possess a**  
 9           **firearm or an NFA firearm, as applicable, must:**

10           **(1) comply with subsection (e)(1);**

11           **(2) maintain custody of the firearm;**

12           **(3) return the firearm to the seller as soon as practicable if the**  
 13           **seller is not otherwise prohibited under federal or state law**  
 14           **from possessing a firearm or an NFA firearm, as applicable;**  
 15           **and**

16           **(4) comply with all applicable federal laws concerning the**  
 17           **transfer of a firearm.**

18           **A dealer who is unable to transact the sale, trade, or transfer of a**  
 19           **firearm due to the inability of the intended recipient to possess a**  
 20           **firearm or an NFA firearm, as applicable, is not required to return**  
 21           **any fee originally charged to the intended recipient for the dealer's**  
 22           **role in the attempted transaction.**

23           **(h) A dealer who discovers that the seller of a firearm and the**  
 24           **intended recipient of the firearm are not eligible, under federal or**  
 25           **state law, to possess a firearm or an NFA firearm, as applicable,**  
 26           **must:**

27           **(1) comply with subsection (e)(1);**

28           **(2) maintain custody of the firearm;**

29           **(3) surrender the firearm to the nearest police department or**  
 30           **law enforcement agency not later than twenty-four (24) hours**  
 31           **after learning of the seller's and intended recipient's**  
 32           **ineligibility to possess a firearm or NFA firearm, as**  
 33           **applicable; and**

34           **(4) comply with all applicable federal laws concerning the**  
 35           **transfer of a firearm.**

36           **A dealer who is unable to transact the sale, trade, or transfer of a**  
 37           **firearm due to the inability of the seller and the intended recipient**  
 38           **to possess a firearm or an NFA firearm, as applicable, is not**  
 39           **required to return any fee originally charged to the seller or the**  
 40           **intended recipient for the dealer's role in the attempted**  
 41           **transaction.**

42           **(i) A dealer who discovers that a firearm to be sold, traded, or**



1 transferred has been:

2 (1) reported:

3 (A) lost; or

4 (B) stolen; or

5 (2) used in the commission of a crime;

6 must comply with subsection (e)(1), maintain custody of the  
7 firearm, and surrender the firearm to the nearest police  
8 department or law enforcement agency not later than twenty-four  
9 (24) hours after learning of the firearm's lost, stolen, or criminal  
10 activity status and comply with all applicable federal laws  
11 concerning the transfer of a firearm. A dealer who is unable to  
12 transact the sale, trade, or transfer of a firearm due to the lost,  
13 stolen, or criminal activity status of the firearm to be sold, traded,  
14 or transferred is not required to return any fee originally charged  
15 to the seller or intended recipient for the dealer's role in the  
16 attempted transaction.

17 (j) A dealer who:

18 (1) refuses to transact the sale, trade, or transfer of a firearm  
19 under subsection (d)(2) and complies with subsection (e); or

20 (2) aborts the sale, trade, or transfer of a firearm for a  
21 reason:

22 (A) described in subsection (f), (g), (h), or (i); or

23 (B) required under federal or state law;

24 shall be immune from civil liability and damages, including  
25 punitive damages, for any act or omission related to the dealer's  
26 decision to terminate a firearm sale, trade, or transfer described in  
27 subdivisions (1) and (2). If a dealer is not liable under this  
28 subsection, no person, by reason of an agency relationship with the  
29 dealer, may be held liable for any damages, including punitive  
30 damages, related to a terminated sale, trade, or transfer of a  
31 firearm.

32 (k) A person who knowingly or intentionally makes a materially  
33 false statement to a dealer for the purpose of completing a  
34 transaction described in this section commits firearm transfer  
35 fraud, a Level 6 felony. However, the offense is a Level 5 felony if  
36 the person has a prior unrelated conviction under this subsection.

37 (l) A dealer or person who knowingly or intentionally transacts  
38 the sale, trade, or transfer of a firearm:

39 (1) without:

40 (A) contacting NICS; or

41 (B) having a dealer contact NICS on the person's behalf;

42 as applicable;



1           (2) without receiving authorization from NICS to proceed  
 2           with the requested sale, trade, or transfer of the firearm  
 3           before transacting the requested sale, trade, or transfer of the  
 4           firearm; or

5           (3) in violation of a NICS instruction to terminate the  
 6           requested sale, trade, or transfer of the firearm;  
 7           commits unlawful transfer of a firearm, a Level 6 felony. However,  
 8           the offense is a Level 5 felony if the dealer or person, as applicable,  
 9           has a prior, unrelated conviction for an offense under this  
 10          subsection.

11          (m) It is a defense to a prosecution under subsection (l) that a  
 12          dealer or person, as applicable, received authorization from NICS  
 13          to transact a sale, trade, or transfer of a firearm.

14          SECTION 5. IC 35-47-4-10 IS ADDED TO THE INDIANA CODE  
 15          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16          1, 2021]: **Sec. 10. A person that owns, organizes, operates, or  
 17          otherwise manages a gun show must do the following:**

18           (1) Conspicuously post a sign at each point of ingress and  
 19           egress with the following verbiage: "A National Instant  
 20           Criminal Background Check is required for all firearms sales,  
 21           trades, and transfers."

22           (2) Provide each gun show exhibitor with a written notice  
 23           indicating that each firearms sale, trade, or transfer must:

24                   (A) be conducted through a dealer; and

25                   (B) involve a National Instant Criminal Background  
 26                   Check.

