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SENATE BILL 427

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY
Joseph Cervantes

AN ACT

RELATING TO CRIME; IMPOSING A MANDATORY WAITING PERIOD WHEN
CONDUCTING SALES OF A FIREARM; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-7-7.1 NMSA 1978 (being Laws 2019,
Chapter 45, Section 1) is amended to read:

"30-7-7.1. UNLAWFUL SALE OF A FIREARM WITHOUT A
BACKGROUND CHECK OR BEFORE THE REQUIRED WAITING PERIOD IS
COMPLETED.--

A. Unlawful sale of a firearm without a background
check consists of the sale of a firearm without conducting a
federal instant background check, subject to the following:

(1) if the buyer of a firearm is not a natural
person, then each natural person who is authorized by the buyer
to possess the firearm after the sale shall undergo a federal

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1 instant background check before taking possession of the
2 firearm;

3 (2) a prospective firearm seller who does not
4 hold a current and valid federal firearms license issued
5 pursuant to 18 U.S.C. Section 923(a) shall arrange for a person
6 who does hold that license to conduct the federal instant
7 background check. A federal firearms licensee shall not
8 unreasonably refuse to perform a background check pursuant to
9 this paragraph; and

10 (3) a person who holds a current and valid
11 federal firearms license issued pursuant to 18 U.S.C. Section
12 923(a) may charge a fee not to exceed thirty-five dollars
13 (\$35.00) for conducting a background check pursuant to this
14 section.

15 B. Unlawful sale of a firearm before the required
16 waiting period is completed consists of a seller and buyer
17 completing the sale of a firearm by transferring physical
18 control of the firearm from the seller to the buyer at any time
19 prior to 8:00 a.m. on the fourteenth day following the
20 initiation of the federal instant background check. For
21 purposes of this subsection, a seller includes the holder of a
22 current and valid federal firearms license issued pursuant to
23 18 U.S.C. Section 923(a).

24 C. Nothing in this section shall prevent the
25 firearm from remaining in the custody of the seller or a person

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1 who holds a current and valid federal firearms license issued
2 pursuant to 18 U.S.C. Section 923(a) during the imposed waiting
3 period; provided that the federal firearms license holder may
4 not transfer the firearm to the buyer prior to the expiration
5 of the waiting period.

6 D. Records of firearm sales shall be available for
7 inspection by any law enforcement agency upon request between
8 9:00 a.m. and 5:00 p.m. on a weekday.

9 ~~[B.]~~ E. The provisions of ~~[Subsection]~~ Subsections
10 A and B of this section do not apply to the sale of a firearm:

11 (1) by or to a person who holds a current and
12 valid federal firearms license issued pursuant to 18 U.S.C.
13 Section 923(a);

14 (2) to a law enforcement agency;

15 (3) between two law enforcement officers
16 authorized to carry a firearm and certified pursuant to federal
17 law or the Law Enforcement Training Act; ~~[or]~~

18 (4) between immediate family members; or

19 (5) to any person who holds a valid New Mexico
20 concealed carry license.

21 ~~[G.]~~ F. As used in this section:

22 (1) "consideration" means anything of value
23 exchanged between the parties to a sale;

24 (2) "federal instant background check" means a
25 background check that meets the requirements of 18 U.S.C.

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1 Section 922(t) and that does not indicate that a sale to the
2 person receiving the firearm would violate 18 U.S.C. Section
3 922(g) or 18 U.S.C. Section 922(n) or state law;

4 (3) "firearm" means any weapon that will or is
5 designed to or may readily be converted to expel a projectile
6 by the action of an explosion; the frame or receiver of any
7 such weapon; or any firearm muffler or firearm silencer; and
8 includes any handgun, rifle or shotgun; but shall not include
9 an antique firearm as defined in 18 U.S.C. Section 921(16), a
10 powder-actuated tool or other device designed to be used for
11 construction purposes, an emergency flare or a firearm in
12 permanently inoperable condition;

13 (4) "immediate family member" means a spouse,
14 parent, child, sibling, grandparent, grandchild, great-
15 grandchild, niece, nephew, first cousin, aunt or uncle; and

16 (5) "sale" means the delivery or passing of
17 ownership, possession or control of a firearm for a fee or
18 other consideration, but does not include temporary possession
19 or control of a firearm provided to a customer by the
20 proprietor of a licensed business in the conduct of that
21 business.

22 ~~[D.]~~ G. Each party to an unlawful sale, including a
23 federal firearms license holder, in violation of this section
24 may be separately charged for the same sale.

25 ~~[E.]~~ H. Each firearm sold contrary to the

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1 provisions of this section constitutes a separate offense under
2 Subsection A of this section.

3 ~~[F.]~~ I. Two or more offenses may be charged in the
4 same complaint, information or indictment and shall be punished
5 as separate offenses.

6 ~~[G.]~~ J. Whoever violates the provisions of this
7 section is guilty of a misdemeanor."