

HB 1589-FN – AS INTRODUCED

2014 SESSION

14-2269
04/05

HOUSE BILL ***1589-FN***

AN ACT requiring background checks for all firearm sales.

SPONSORS: Rep. Andrews-Ahearn, Rock 37; Rep. Borden, Rock 24; Rep. R. Brown, Graf 2;
Rep. Harding, Graf 13; Rep. Schlachman, Rock 18; Rep. K. Rogers, Merr 28; Rep.
K. Ward, Straf 21; Sen. Pierce, Dist 5

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill requires all firearms in this state to be sold or transferred through a licensed firearms dealer and provides for a criminal penalty for a violation.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT requiring background checks for all firearm sales.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Legislative Findings.

2 I. The general court finds that:

3 (a) Federal law requires anyone “engage[d] in the business” of selling firearms to obtain
4 a federal firearms license. However, many individuals sell firearms without such a license. In fact,
5 it has been estimated that 40 percent of all firearms are sold in the United States by unlicensed
6 people.

7 (b) Federal law requires federally licensed firearms dealers, but not unlicensed sellers of
8 firearms, to, among other things, perform background checks on prospective firearm purchasers and
9 maintain records of all firearm sales.

10 (c) Background checks are an effective and easy mechanism to ensure that guns are not
11 purchased by or transferred to those who are prohibited from possessing them. Since 1998,
12 background checks have blocked over 2,000,000 gun sales to felons, domestic abusers, the severely
13 mentally ill, and other dangerous people.

14 (d) Private firearm sales are a significant public safety concern. The gap in federal law
15 that allows unlicensed individuals to sell firearms without background checks is known as the
16 “private sale” loophole. Because federal background check requirements apply only to sales or
17 transfers by licensed firearm dealers, an estimated 6.6 million guns are sold or transferred without a
18 background check each year, giving criminals and dangerously mentally ill individuals easy access to
19 firearms.

20 (e) Websites like Armslist.com have tens of thousands of guns for sale at a time,
21 including hundreds in New Hampshire at any given time, and buyers can easily avoid background
22 checks by choosing to shop with unlicensed sellers.

23 (1) An undercover investigation in 2011 revealed 62 percent of private online sellers
24 are willing to sell a gun to someone who probably could not pass a background check.

25 (2) An investigation of 13,000 Armslist ads placed by people seeking firearms found
26 that 1 in 30 of them had a criminal record which prohibited them from buying guns - 4 times the
27 share of people seeking guns from licensed dealers who are denied due to a criminal record.

28 (3) It is estimated that at least 25,000 guns are transferred each year to criminals via
29 Armslist.com.

30 (f) Extending background checks to include private sales and transfers helps ensure that
31 all persons buying guns are legally eligible to do so. In 2010, the rate of women shot to death by

1 intimate partners was 38 percent lower in states that required background checks on all handgun
2 sales than in other states – and 47 percent lower than in New Hampshire – while the rate of women
3 murdered by intimate partners by other means was nearly identical. The rate of law enforcement
4 officers killed with handguns that were not their own was 39 percent lower in states that required
5 background checks on all handgun sales, and the firearm-suicide rate was 49 percent lower.

6 (g) States that require private sale background checks also export 64 percent fewer crime
7 guns to other states. In 2009, over 100 guns that originated in New Hampshire were recovered in
8 crimes committed in Massachusetts, a state that requires background checks before private gun
9 sales and transfers.

10 (h) Universal background checks reduce illegal trafficking and treat all transfers
11 equally, whether the purchaser is at a gun shop, a gun show, or buying the gun from a seller he or
12 she met online. Universal background checks help ensure that all persons buying guns are legally
13 eligible to do so.

14 (i) In a 2007 report, the International Association of Chiefs of Police (IACP) explained
15 that, because individuals who fail a background check can easily access firearms through private
16 sales, “guns are far too easily acquired by prohibited possessors, and too often end up being used in
17 gun crime and gun violence.” The report concluded that “Congress, as well as state, local and tribal
18 governments, should enact laws requiring that all gun sales and transfers proceed through” a
19 federally licensed dealer.

20 (j) New Hampshire residents overwhelmingly support laws requiring background checks
21 on all gun purchasers: A poll conducted by Schoen LLC in February 2013 found that 89 percent of
22 New Hampshire residents support requiring a background check before every gun sale.

23 II. It is the purpose and intent of the general court in enacting RSA 159-E to require all
24 firearm sales in New Hampshire to be processed through a licensed firearms dealer, who will conduct
25 a background check and create a record of each sale. The general court believes this law will protect
26 public safety by helping to keep guns out of the hands of felons, domestic abusers, the dangerously
27 mentally ill, and other prohibited persons, and by aiding law enforcement efforts to solve gun crimes.

28 2 New Chapter; Universal Background Checks for Firearms Sales. Amend RSA by inserting
29 after chapter 159-D the following new chapter:

30 **CHAPTER 159-E**

31 **UNIVERSAL BACKGROUND CHECKS FOR FIREARMS SALES**

32 159-E:1 Definitions. As used in this chapter:

33 I. “Firearm” means any weapon or device designed to be used as a weapon, which will, is
34 designed to, or may be readily converted to expel a projectile by the action of an explosive, explosion,
35 or other means of combustion, or the frame or receiver of such a device, provided the term “firearm”
36 shall not include the term “antique firearm” as defined in 18 U.S.C. section 921(a)(16), or a weapon
37 that has been rendered permanently inoperable and is incapable of being readily restored to a firing

1 condition.

2 II. “Law enforcement” means any person employed by the United States, or a state, county,
3 city, municipality, village, township, or other political subdivision as a police officer, peace officer, or
4 another position involving the enforcement of the law and protection of the public interest.

5 III. “Licensed firearms dealer,” “licensed dealer,” or “dealer” means a person who has a valid
6 federal firearms dealer license under 18 U.S.C. section 923(a), and all additional licenses required by
7 state or local law to engage in the business of selling or transferring firearms.

8 IV. “Person” means any individual, corporation, company, association, firm, partnership,
9 club, organization, society, joint stock company or other entity, and shall include any entity that
10 engages in business in this state, in whole or part, through Internet or mail order sales.

11 V. “Transfer” means the intended delivery of a firearm to another person, either with or
12 without consideration of payment or promise of payment, and includes gifts and loans.

13 159-E:2 Firearms Sales to be Conducted Through a Licensed Dealer.

14 I. No person shall sell or transfer a firearm unless:

- 15 (a) The person is a licensed firearms dealer; or
16 (b) The purchaser or transferee is a licensed firearms dealer; or
17 (c) The requirements of paragraph II are met.

18 II. If neither party to a prospective firearms transaction is a licensed firearms dealer, the
19 parties to the transaction shall complete the sale or transfer through a licensed firearms dealer as
20 follows:

21 (a) The seller or transferor shall deliver the firearm to the dealer, who shall process the
22 sale or other transfer as if he or she were the seller or other transferor, except that the unlicensed
23 seller or transferor may remove the firearm from the business premises of the licensed dealer while
24 the background check is being conducted. If the seller or transferor removes the firearm from the
25 business premises of the licensed dealer while the background check is being conducted, the
26 purchaser or transferee and the seller or transferor shall return to the business premises of the
27 licensed dealer, and the seller or transferor shall again deliver the firearm to the licensed dealer
28 prior to completing the sale or transfer.

29 (b) Except as provided in subparagraph (a), the dealer shall comply with all
30 requirements of federal, state, and local law that would apply if the licensed dealer were selling or
31 transferring the firearm from his or her inventory to the purchaser or transferee, including but not
32 limited to, conducting a background check on the prospective purchaser or transferee, which shall
33 include a check of the National Instant Criminal Background Check System (NICS), and compliance
34 with all federal, state, and local recordkeeping requirements.

35 (c) If the transaction is not prohibited, the dealer shall deliver the firearm to the buyer
36 or transferee after all legal requirements are met.

37 (d) If the dealer cannot legally deliver the firearm to the buyer or transferee, the dealer

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1 shall return the firearm to the seller or transferor and the transfer to the buyer or transferee shall
2 not take place.

3 (e) The dealer may require the purchaser or transferee to pay a reasonable fee.

4 159-E:3 Exceptions. This chapter shall not apply to:

5 I. A transfer between immediate family members, which shall be limited to spouses, parents,
6 children, grandparents, grandchildren, and siblings, that is a loan or bona fide gift. This exception
7 shall not apply if the owner or the family member knows or has reasonable cause to believe that
8 federal, state, or local law prohibits the family member from purchasing or possessing firearms, or
9 the owner knows or has reasonable cause to believe that the family member is likely to use the
10 firearm for unlawful purposes.

11 II. Any law enforcement or corrections agency, or law enforcement or corrections officer
12 acting within the course and scope of his or her employment or official duties.

13 III. A United States Marshal or member of the armed forces of the United States or the
14 National Guard, or a federal official transferring or receiving a firearm as required in the operation
15 of his or her official duties.

16 IV. A federally licensed gunsmith who receives a firearm solely for the purposes of service or
17 repair, or the return of the firearm to its owner by the federally licensed gunsmith.

18 V. A common carrier, warehouseman, or other person engaged in the business of
19 transportation or storage, to the extent that the receipt of any firearm is in the ordinary course of
20 business and not for the personal use of any such person.

21 VI. A person who acquired the firearm by operation of law upon the death of the former
22 owner of the firearm.

23 VII. The temporary transfer of a firearm (i) between spouses; (ii) for the purposes of
24 immediate self-defense provided the transfer lasts only as long as immediately necessary; (iii) that
25 occurs at an established shooting range authorized by the governing body of the jurisdiction in which
26 such range is located, provided the firearm is kept at such range during the entirety of the transfer;
27 (iv) that occurs at a lawfully organized competition involving the use of a firearm, or while
28 participating in or practicing for a performance by an organized group that uses firearms as part of
29 the performance, provided the transferee's possession of the firearm is exclusively while
30 participating in such activity; (v) to a person who is under 18 years of age for lawful hunting,
31 sporting, or educational purposes while under the direct supervision and control of a responsible
32 adult who is not prohibited from possessing firearms; or (vi) while hunting if the hunting is legal in
33 all places where the person to whom the firearm is transferred possesses the firearm and the person
34 to whom the firearm is transferred has completed all training and holds all licenses or permits
35 required for such hunting. Any temporary transfer allowed under this paragraph shall be permitted
36 only if the person to whom the firearm is transferred is not prohibited from possessing firearms
37 under state or federal law.

1 159-E:4 Penalties.

2 I. Any person who violates any provision of this chapter shall be guilty of a class B felony.
3 Each day or portion of a day during which a violation of this chapter is committed or continues shall
4 constitute a separate offense.

5 II. The local law enforcement agency shall report all violations of this chapter by a licensed
6 firearms dealer to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

7 159-E:5 Other Laws.

8 I. Nothing in this chapter shall be construed to modify or change the duties of the
9 department of safety pursuant to RSA 159-D.

10 II. Nothing in this chapter shall be construed to require or authorize any state, county, or
11 local law enforcement agency to establish or maintain a registry of firearms sold or transferred in
12 accordance with this chapter.

13 3 Applicability. The provisions of section 2 of this act shall apply to the sale or transfer of a
14 firearm on or after the effective date of this act and shall not apply to sales completed prior to the
15 effective date of this act.

16 4 Effective Date. This act shall take effect January 1, 2015.

HB 1589-FN - FISCAL NOTE

AN ACT requiring background checks for all firearm sales.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. The Department of Safety states this bill may increase state restricted expenditures by \$200,744 in FY 2015, \$361,580 in FY 2016, \$378,629 in FY 2017, and \$396,997 in FY 2018. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill adds RSA 159-E regarding universal background checks for firearms sales. It would require private sales of firearms be conducted through a licensed firearms dealer so that a background check of the buyer can be conducted. Violation of RSA 159-E would be a class B felony. The Branch has no information to estimate how many additional felony cases may result from the proposed bill. The Branch does have information on the average cost of processing a class B felony case which is classified as a routine criminal case. The cost for a routine criminal case will be \$425.27 in FY 2015, and \$433.34 in FY 2016 and each year thereafter. The possibility for a case to be appealed increases the cost. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since the last needs assessment studies there have been changes to the judicial system, such as the formation of the circuit court, more self-represented litigants and how cases are processed, that may impact the costs associated with processing cases.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures if an individual is found to be indigent and the public defender program is unable to provide representation. The majority of the cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). The public defender program is appropriated monies that it expends according to the terms of its contract with the Council, of which the proposed changes in this bill would not impact. The Council states if the public defender program is not used then a contract attorney is used, charging a flat fee of \$756.25 per felony. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$4,100 for a felony charge.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The Department of Safety states this bill will increase state restricted expenditures as it anticipates the workload of its permits and licensing unit will increase as a result of this bill. The Department states this bill will have no impact on state revenue. It is expected for calendar year 2013 this unit will handle over 50,000 calls from federal firearm licensed dealers for background checks on the sale of handguns to NH residents. The number of private sales occurring in the State is not known, however the national estimate is that sales from federal firearm licensed dealers account for 60 percent of the total and the remaining 40 percent come from private sales. The Department estimates the number of calls will increase by 33,333 based on the call volume increasing by the 40 percent of private sales that would now need to go through a licensed dealer for a background check. The Department anticipates it will need to add seven counter clerk III (LG 11) positions to manage the increased workload. Position costs contained in table adjust for the 2.25 percent salary increases in July 2014 and January 2015.

	FY 2015	FY 2016	FY 2017	FY 2018
Counter Clerk III (7 positions) Salary	\$95,046	\$193,662	\$200,865	\$208,719
Benefits	79,651	167,918	177,764	188,278
7 Work Stations	5,047	0	0	0
7 Computers	21,000	0	0	0
Total	\$200,744	\$361,580	\$378,629	\$396,997

The New Hampshire Association of Counties states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have increased expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The Department of Justice states this bill will not have a fiscal impact on the Department because such offenses are typically prosecuted by local and county prosecutors not the

Department and any appeals for a conviction for such an offense could be handled within the Department's existing budget.

The New Hampshire Municipal Association states the requirements of this bill for local enforcement agencies to report any violations of the law by a licensed dealer to the Bureau of Alcohol, Tobacco, Firearms and Explosives can be accomplished without significant additional municipal expenditures. Based on that, the Association states this bill will have no fiscal impact on local revenue or expenditures.

This bill does not contain authorization or an appropriation for additional positions.