

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING BACKGROUND CHECKS FOR PRIVATE FIREARM
5 TRANSFERS; REQUIRING FIREARM TRANSFERS TO BE PROCESSED THROUGH FEDERALLY LICENSED
6 FIREARM DEALERS; AUTHORIZING FEDERALLY LICENSED DEALERS TO CHARGE A FEE FOR
7 CONDUCTING BACKGROUND CHECKS; PROHIBITING THE TRANSFER OF A FIREARM TO A PERSON
8 WHO IS NOT ELIGIBLE TO RECEIVE AND POSSESS A FIREARM UNDER STATE AND FEDERAL LAW;
9 PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS FOR CERTAIN FIREARM TRANSFERS; CREATING
10 CRIMINAL OFFENSES FOR UNLAWFUL FIREARM TRANSFERS; AND PROVIDING AN IMMEDIATE
11 EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions
16 apply:

17 (1) "Dealer" means a person who holds a federal firearms license under 18 U.S.C. 923(a).

18 (2) "Firearm" has the same meaning as provided in 18 U.S.C. 921(a)(3).

19 (3) "Immediate family member" means a spouse, domestic partner, parent, child, sibling, grandparent,
20 or grandchild.

21 (4) "National instant criminal background check system" means the national system established by the
22 Brady Handgun Violence Prevention Act of 1993, Public Law 103-159, for determining a transferee's eligibility
23 to receive and possess a firearm.

24 (5) "Person" means any individual, corporation, company, association, firm, partnership, club,
25 organization, or other legal entity.

26 (6) "Transfer" means the delivery or receipt of a firearm, regardless of whether the firearm is purchased
27 with or without consideration or payment or received as a gift or loan.

28 (7) "Transferee" means a person who receives or intends to receive a firearm regardless of whether the
29 person purchases the firearm with or without consideration or payment or whether the firearm is received as a
30 gift or loan. The term does not include a person who is a dealer.



1 (8) "Transferor" means a person who voluntarily delivers or intends to deliver a firearm regardless of
2 whether the person sells the firearm with or without consideration or payment or whether the firearm is transferred
3 as a gift or loan. The term does not include a person who is a dealer.

4
5 NEW SECTION. **Section 2. Firearm transfers -- background checks.** (1) Except as provided in
6 [section 3], a firearm may not be transferred in this state unless a background check on the prospective transferee
7 has been obtained pursuant to this section and the prospective transferee is entitled to receive and possess a
8 firearm under state and federal law.

9 (2) (a) To transfer a firearm as provided in subsection (1), the transferor shall deliver the firearm to a
10 dealer to process the transfer. The dealer shall utilize the same process the dealer would use to transfer a firearm
11 from the dealer's own inventory to a prospective transferee, including but not limited to conducting a background
12 check on the prospective transferee through the national instant criminal background check system and fulfilling
13 all federal recordkeeping requirements for firearm transfers. The firearm may not be loaded when it is delivered
14 to a dealer, and the dealer may require the transferor to remove the firearm from the premises while the transfer
15 is being processed.

16 (b) The prospective transferee shall be present at the time the dealer is processing the transfer and shall
17 sign, complete, and submit all forms and documents necessary to complete the transfer.

18 (c) Neither the transferor nor the transferee shall knowingly make any material false oral or written
19 statements or furnish or exhibit any false identification intended to deceive a dealer.

20 (d) The dealer shall provide the firearm transferor and transferee a copy of the results of the background
21 check, indicating whether the prospective transferee is entitled to receive and possess a firearm under state and
22 federal law.

23 (e) (i) If the results of the background check indicate the prospective transferee is not entitled to receive
24 and possess a firearm under state and federal law, the firearm may not be transferred to the prospective
25 transferee and the firearm must be returned to the transferor.

26 (ii) If the results of the background check indicate the prospective transferee is entitled to receive and
27 possess a firearm under state and federal law, the transfer may be completed and the firearm may be transferred
28 to the prospective transferee.

29 (f) The dealer may charge a reasonable fee for processing the transaction as provided in this section.

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1 **NEW SECTION. Section 3. Exceptions to background check requirement.** The provisions of [section
2 2] do not apply if:

3 (1) the transferee or transferor is a dealer;
4 (2) the transfer is a bona fide gift or loan between immediate family members;
5 (3) the firearm is an antique firearm as defined in 18 U.S.C. 921(a);
6 (4) the transfer is temporary and is necessary to prevent imminent death or great bodily harm, provided
7 that:

8 (a) the transfer lasts only as long as necessary to prevent the threat of imminent death or great bodily
9 harm; and

10 (b) the transferor reasonably believes the transferee is eligible to receive and possess a firearm under
11 state and federal law;

12 (5) (a) either the transferor or transferee is a:

13 (i) law enforcement agency, including the department of corrections;

14 (ii) peace officer as defined in 46-1-202;

15 (iii) private security guard who possesses a firearm for employment purposes;

16 (iv) state or federal law enforcement officer;

17 (v) corrections officer employed by the department of corrections;

18 (vi) local detention officer;

19 (vii) probation or parole officer employed by the department of corrections; or

20 (viii) member of the armed forces of the United States or the national guard; and

21 (b) the transferor or transferee is acting within the course and scope of the transferor's or transferee's
22 employment or official law enforcement duties;

23 (6) the transfer is temporary, the transferor has no reason to believe that the transferee intends to use
24 the firearm in the commission of a crime, and the transferee's possession of the firearm takes place exclusively:

25 (a) at an established shooting range;

26 (b) at an organized firearm target shooting competition;

27 (c) while hunting or trapping if such activity is legal in all places where the transferee possesses the
28 firearm and the transferee holds a license or permit required for such activity; or

29 (d) while in the immediate presence of the transferor;

30 (7) the transfer occurs by operation of law upon the death of a person for whom the transferee is an

1 executor, administrator, trustee, or personal representative of an estate or a trust created in a will; or

2 (8) the transferee holds a valid permit to carry a concealed weapon pursuant to 45-8-321.

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4 **NEW SECTION. Section 4. Transferring firearm without background check -- penalties.** (1) Any
5 transferor or transferee who knowingly transfers or receives a firearm in violation of [section 2] or knowingly
6 makes a false statement or exhibits any false identification intended to deceive a dealer in violation of [section
7 2] commits the offense of transferring a firearm without a background check.

8 (a) A person convicted of a first offense under subsection (1) shall be fined an amount of not more than
9 \$1,000 or be imprisoned in the county jail for not more than 1 year, or both.

10 (b) A person convicted of a second or subsequent offense under subsection (1) shall be fined an amount
11 of not more than \$10,000 or be imprisoned in the state prison for not more than 5 years, or both.

12 (2) A dealer who knowingly violates any requirements of [section 2] shall be fined an amount of not more
13 than \$1,000 or be imprisoned in the county jail for not more than 1 year, or both.

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15 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified
16 as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [sections
17 1 through 4].

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19 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
21 remains in effect in all valid applications that are severable from the invalid applications.

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23 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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