

# SENATE BILL No. 468

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-30-2-151.3; IC 35-31.5-2-210.5; IC 35-47-2.5.

**Synopsis:** Universal background checks for firearms. Requires a person wishing to sell, trade, or transfer a firearm to another person 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 a 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 a firearm; (2) the intended recipient of a 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 materially false statement to a dealer for the purpose of completing the  
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**Effective:** July 1, 2019.

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## Taylor G

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January 14, 2019, read first time and referred to Committee on Judiciary.

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Digest Continued

sale, trade, or transfer of a firearm commits firearms 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 who transacts the 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 person has a prior unrelated conviction for the offense. Specifies certain defenses. Defines certain terms. Makes conforming amendments.



Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## SENATE BILL No. 468

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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, 2019]: **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, 2019]: **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 35-47-2.5-1.5 IS ADDED TO THE INDIANA  
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
13 [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. As used in this chapter,**  
14 **"NFA firearm" means a firearm as defined in U.S.C. 5845(a) (the**  
15 **National Firearms Act).**

2019

IN 468—LS 7289/DI 123



1 SECTION 4. IC 35-47-2.5-4.5 IS ADDED TO THE INDIANA  
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2019]: **Sec. 4.5. (a) This section does not**  
 4 **apply to:**

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

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

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

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

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

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

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

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

18 (6) the receipt of a firearm by a person 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 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; or

36 (ii) the dealer;

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

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

41 (1) Successfully contact NICS.

42 (2) Receive authorization to complete the requested sale,



1 trade, or transfer of the firearm from NICS before  
 2 performing the requested sale, trade, or transfer.

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

5 (d) A dealer may:

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

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

10 If a dealer refuses to transact a sale, trade, or transfer, the dealer  
 11 must provide to the prospective recipient and prospective seller a  
 12 written explanation for the dealer's refusal to transact the  
 13 requested sale, trade, or transfer.

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

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

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

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

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

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

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

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

35 (2) maintain custody of the firearm;

36 (3) surrender the firearm to the state police not later than  
 37 twenty-four (24) hours after learning of the seller's inability  
 38 to possess the firearm or NFA firearm, as applicable; and

39 (4) comply with all applicable federal laws concerning the  
 40 transfer of a firearm.

41 A dealer who is unable to transact the sale, trade, or transfer of a  
 42 firearm due to the inability of the seller to possess a firearm or



1 NFA firearm, as applicable, is not required to return any fee  
 2 originally charged to the seller for the dealer's role in the  
 3 attempted transaction.

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

- 7 (1) comply with subsection (e)(1);  
 8 (2) maintain custody of the firearm;  
 9 (3) return the firearm to the seller as soon as practicable if the  
 10 seller is not otherwise prohibited under federal or state law  
 11 from possessing the firearm or NFA firearm, as applicable;  
 12 and  
 13 (4) comply with all applicable federal laws concerning the  
 14 transfer of a firearm.

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

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

- 24 (1) comply with subsection (e)(1);  
 25 (2) maintain custody of the firearm;  
 26 (3) surrender the firearm to the state police not later than  
 27 twenty-four (24) hours after learning of the seller's and  
 28 intended recipient's ineligibility to possess a firearm or NFA  
 29 firearm, as applicable; and  
 30 (4) comply with all applicable federal laws concerning the  
 31 transfer of a firearm.

32 A dealer who is unable to transact the sale, trade, or transfer of a  
 33 firearm due to the inability of the seller and the intended recipient  
 34 to possess a firearm or NFA firearm, as applicable, is not required  
 35 to return any fee originally charged to the seller or the recipient  
 36 for the dealer's role in the attempted transaction.

37 (i) A dealer who discovers that a firearm to be sold, traded, or  
 38 transferred has been:

- 39 (1) reported:  
 40 (A) lost; or  
 41 (B) stolen; or  
 42 (2) used in the commission of a crime;



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

11 (j) A dealer who:

- 12 (1) refuses to transact the sale, trade, or transfer of a firearm  
13 under subsection (d)(2) and complies with subsection (e); or  
14 (2) aborts the sale, trade, or transfer of a firearm for a  
15 reason:

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

17 (B) required under federal or state law;

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

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

31 (l) A dealer who knowing or intentionally transacts the sale,  
32 trade, or transfer of a firearm:

33 (1) without contacting NICS;

34 (2) without receiving authorization from NICS to proceed  
35 with the requested sale, trade, or transfer of the firearm  
36 before transacting the requested sale, trade, or transfer of a  
37 firearm; or

38 (3) in violation of a NICS instruction to terminate the  
39 requested sale, trade, or transfer of a firearm;

40 commits unlawful transfer of a firearm, a Level 6 felony. However,  
41 the offense is a Level 5 felony if the person has a prior, unrelated  
42 conviction for an offense under this subsection.



1           **(m) It is a defense to a prosecution under subsection (l) that a**  
2           **dealer received authorization from NICS to transact a sale, trade,**  
3           **or transfer of a firearm.**

