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SENATE BILL 255

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO CRIME; CREATING THE CRIME OF FACILITATION OF THE UNLAWFUL SALE OF A FIREARM WITHOUT A BACKGROUND CHECK; PROVIDING PENALTIES; ADDING UNLAWFUL SALE OF A FIREARM WITHOUT A BACKGROUND CHECK AND FACILITATION OF THE UNLAWFUL SALE OF A FIREARM WITHOUT A BACKGROUND CHECK TO THE DEFINITION OF "RACKETEERING".

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--FACILITATION OF THE UNLAWFUL SALE OF A FIREARM WITHOUT A BACKGROUND CHECK.--

A. Unlawful sale of a firearm without a background check consists of the sale of a firearm without conducting a

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1 federal instant background check, subject to the following:

2 (1) if the buyer of a firearm is not a natural
3 person, then each natural person who is authorized by the buyer
4 to possess the firearm after the sale shall undergo a federal
5 instant background check before taking possession of the
6 firearm;

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

14 (3) a person who holds a current and valid
15 federal firearms license issued pursuant to 18 U.S.C. Section
16 923(a) may charge a fee not to exceed thirty-five dollars
17 (\$35.00) for conducting a background check pursuant to this
18 section.

19 B. The provisions of Subsection A of this section
20 do not apply to the sale of a firearm:

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

24 (2) to a law enforcement agency;

25 (3) between two law enforcement officers

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1 authorized to carry a firearm and certified pursuant to federal
2 law or the Law Enforcement Training Act; or

3 (4) between immediate family members.

4 C. Facilitation of the unlawful sale of a firearm
5 without a background check consists of allowing or failing to
6 prevent by reasonable means an unlawful firearm sale through
7 the operation of a publicly available platform in which
8 reasonable, industry standard steps could be taken to block or
9 limit the unlawful sale of a firearm but, through either action
10 or inaction, the unlawful sale of a firearm without a
11 background check is not prevented.

12 [~~E.~~] D. As used in this section:

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

15 (2) "federal instant background check" means a
16 background check that meets the requirements of 18 U.S.C.
17 Section 922(t) and that does not indicate that a sale to the
18 person receiving the firearm would violate 18 U.S.C. Section
19 922(g) or 18 U.S.C. Section 922(n) or state law;

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

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

7 (5) "sale" means the delivery or passing of
8 ownership, possession or control of a firearm for a fee or
9 other consideration, but does not include temporary possession
10 or control of a firearm provided to a customer by the
11 proprietor of a licensed business in the conduct of that
12 business.

13 [~~D.~~] E. Each party to an unlawful sale in violation
14 of this section may be separately charged for the same sale.

15 [~~E.~~] F. Each firearm sold contrary to the
16 provisions of this section constitutes a separate offense under
17 [~~Subsection A~~] Subsections A and C of this section.

18 [~~F.~~] G. Two or more offenses may be charged in the
19 same complaint, information or indictment and shall be punished
20 as separate offenses.

21 [~~G.~~] H. Whoever violates the provisions of this
22 section is guilty of a [~~misdemeanor~~] third degree felony."

23 SECTION 2. Section 30-42-3 NMSA 1978 (being Laws 1980,
24 Chapter 40, Section 3, as amended) is amended to read:

25 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

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1 A. "racketeering" means any act that is chargeable
2 or indictable under the laws of New Mexico and punishable by
3 imprisonment for more than one year, involving any of the
4 following cited offenses:

5 (1) murder, as provided in Section 30-2-1 NMSA
6 1978;

7 (2) robbery, as provided in Section 30-16-2
8 NMSA 1978;

9 (3) kidnapping, as provided in Section 30-4-1
10 NMSA 1978;

11 (4) forgery, as provided in Section 30-16-10
12 NMSA 1978;

13 (5) larceny, as provided in Section 30-16-1
14 NMSA 1978;

15 (6) fraud, as provided in Section 30-16-6 NMSA
16 1978;

17 (7) embezzlement, as provided in Section
18 30-16-8 NMSA 1978;

19 (8) receiving stolen property, as provided in
20 Section 30-16-11 NMSA 1978;

21 (9) bribery, as provided in Sections 30-24-1
22 through 30-24-3.1 NMSA 1978;

23 (10) gambling, as provided in Sections
24 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

25 (11) illegal kickbacks, as provided in

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1 Sections 30-41-1 and 30-41-2 NMSA 1978;

2 (12) extortion, as provided in Section 30-16-9
3 NMSA 1978;

4 (13) trafficking in controlled substances, as
5 provided in Section 30-31-20 NMSA 1978;

6 (14) arson and aggravated arson, as provided
7 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
8 1978;

9 (15) promoting prostitution, as provided in
10 Section 30-9-4 NMSA 1978;

11 (16) criminal solicitation, as provided in
12 Section 30-28-3 NMSA 1978;

13 (17) fraudulent securities practices, as
14 provided in the New Mexico Uniform Securities Act;

15 (18) loan sharking, as provided in Sections
16 30-43-1 through 30-43-5 NMSA 1978;

17 (19) distribution of controlled substances or
18 controlled substance analogues, as provided in Sections
19 30-31-21 and 30-31-22 NMSA 1978;

20 (20) a violation of the provisions of Section
21 30-51-4 NMSA 1978;

22 (21) unlawful taking of a vehicle or motor
23 vehicle, as provided in Section 30-16D-1 NMSA 1978;

24 (22) embezzlement of a vehicle or motor
25 vehicle, as provided in Section 30-16D-2 NMSA 1978;

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1 (23) fraudulently obtaining a vehicle or motor
2 vehicle, as provided in Section 30-16D-3 NMSA 1978;

3 (24) receiving or transferring stolen vehicles
4 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

5 (25) altering or changing the serial number,
6 engine number, decal or other numbers or marks of a vehicle or
7 motor vehicle, as provided in Section 30-16D-6 NMSA 1978; [~~and~~]

8 (26) trafficking cannabis products, as
9 provided in Section 26-2C-28 NMSA 1978; and

10 (27) unlawful sale of a firearm without a
11 background check and facilitation of the unlawful sale of a
12 firearm without a background check, as provided in Section
13 30-7-7.1 NMSA 1978;

14 B. "person" means an individual or entity capable
15 of holding a legal or beneficial interest in property;

16 C. "enterprise" means a sole proprietorship,
17 partnership, corporation, business, labor union, association or
18 other legal entity or a group of individuals associated in fact
19 although not a legal entity and includes illicit as well as
20 licit entities; and

21 D. "pattern of racketeering activity" means
22 engaging in at least two incidents of racketeering with the
23 intent of accomplishing any of the prohibited activities set
24 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
25 provided at least one of the incidents occurred after February

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1 28, 1980 and the last incident occurred within five years after
2 the commission of a prior incident of racketeering."

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