

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

972W0385

HOUSE BILL NO. 1205

Introduced by: Representatives Stalzer, Campbell, Craig, Gosch, Haugaard, Hickey, Latterell, May, Qualm, Schoenbeck, Wiik, Willadsen, and Wollmann and Senators Monroe, Greenfield (Brock), Hagggar (Jenna), Lederman, and Olson

1 FOR AN ACT ENTITLED, An Act to provide for the certification by a chief law enforcement
2 officer of the transfer of certain firearms.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms in this Act mean:

- 7 (1) "Chief law enforcement officer," any official, the Bureau of Alcohol, Tobacco,
8 Firearms and Explosives, or any successor agency, identified by regulation or
9 otherwise as eligible to provide any required certification for the making or transfer
10 of a firearm;
- 11 (2) "Certification," the participation and assent of the chief law enforcement officer
12 necessary under federal law for the approval of the application to make or transfer a
13 firearm;
- 14 (3) "Firearm," as defined in National Firearms Act, 26 U.S.C. § 5845 (a), as of



1 January 27, 2015.

2 Section 2. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 If a chief law enforcement officer's certification is required by federal law for the making
5 or transfer of a firearm, the chief law enforcement officer shall, within fifteen days of receipt
6 of a request for certification, provide the certification if the applicant is not prohibited by law
7 from receiving or possessing the firearm or is not the subject of a proceeding that could result
8 in the applicant's prohibition by law from receiving or possessing the firearm. If the chief law
9 enforcement officer is unable to make a certification as required by the section, the officer shall
10 provide the applicant a written notice of the denial and reason for the determination. A chief law
11 enforcement officer is not required to make any certification under this section the officer knows
12 to be untrue, but may not refuse to provide certification based on a generalized objection to a
13 private person or entity making, possessing, or receiving any firearm or any certain type of
14 firearm otherwise permitted by law.

15 Section 3. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 In making the certification required by section 2 of this Act, a chief law enforcement officer
18 may require the applicant to provide only the information as is required by federal or state law
19 to identify the applicant and conduct a criminal background check, including a check of the
20 national instant criminal background check system, or to determine the disposition of an arrest
21 or proceeding relevant to the applicant's eligibility to lawfully possess or receive a firearm. No
22 chief law enforcement officer may require access to, or consent for, an inspection of any private
23 premises as a condition of making a certification under this section.

24 Section 4. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any chief law enforcement officer and any employee of the officer who acts in good faith
3 is immune from liability arising from any act or omission in making a certification as required
4 by this Act.

5 Section 5. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 An applicant whose request for certification is denied may appeal the chief law enforcement
8 officer's decision to the circuit court located in the city or county in which the applicant resides.
9 The court shall review the chief law enforcement officer's decision to deny the certification de
10 novo. If the court finds that the applicant is not prohibited by law from receiving or possessing
11 the firearm, that the applicant is not the subject of a proceeding that could result in a prohibition,
12 or that no substantial evidence supports the chief law enforcement officer's determination to
13 deny the certification, the court shall order the chief law enforcement officer to issue the
14 certification and award court costs and reasonable attorney's fees to the applicant.