

LEGISLATIVE BILL 355

Approved by the Governor June 7, 1991

Introduced by Ashford, 6; Will, 8; Crosby, 29;
Landis, 46; Hall, 7; Schimek, 27;
Beutler, 28; Chambers, 11; Wesely, 26;
Rasmussen, 20

AN ACT relating to handguns; to state intent; to require a certificate for the purchase, lease, rental, or transfer of a handgun; to provide exceptions; to provide for application procedures, an investigation, time limits, and an appeal; to provide penalties; to provide for upgrading of automated criminal history files, procedures for a criminal history record check, and an annual report; to provide powers and duties for the Nebraska State Patrol; to provide for the effect of city and village ordinances; and to define terms.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature hereby finds and declares that the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns and that requiring a certificate prior to the purchase, lease, rental, or transfer of a handgun serves a valid public purpose.

Sec. 2. Except as provided in section 8 of this act, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 3 of this act. Except as provided in section 8 of this act, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate. The certificate shall not be required if:

(1) The person acquiring the handgun is a licensed firearms dealer under federal law;

(2) The handgun is an antique handgun;

(3) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(4) The transfer is a temporary transfer of a handgun and the transferee remains (a) in the line of sight of the transferor or (b) within the premises of an established shooting facility; or

(5) The transfer is between a person and his

or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent.

Sec. 3. Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, social security number, address, and date of birth. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Sec. 4. Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to two days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the two-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the two-day period, the day of receipt of the application shall not be included and the last day of the two-day period shall be included. The two-day period shall expire at 11:59 p.m. of the second day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the two-day period the chief of police

or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law enforcement agency complies with sections 1 to 7 of this act.

Sec. 5. Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the two-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence. The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

Sec. 6. A certificate issued in accordance with section 3 of this act shall contain the holder's name, social security number, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 3 of this act, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 5 of this act.

Sec. 7. Any person who willfully provides false information on an application form for a certificate under section 3 of this act shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 1 to 6 of this act shall, upon conviction, be guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

Sec. 8. It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a

licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 9 to 22 of this act.

Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 1 to 7 of this act or under sections 9 to 22 of this act.

Sec. 9. No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 1 to 7 of this act; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include only the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska

State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Sec. 10. (1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Review its criminal history records to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 9 to 22 of this act with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 9 of this act, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

Sec. 11. (1) Any records which are created by the Nebraska State Patrol to conduct the criminal history record check containing any of the information set forth in subdivision (2)(a) of section 9 of this act pertaining to a potential buyer or transferee who is not prohibited from receipt or transfer of a handgun by reason of state or federal law shall be confidential and may not be disclosed by the patrol or any officer or

employee thereof to any person. The Nebraska State Patrol shall destroy any such records as soon as possible after communicating the unique approval number, and in any event, such records shall be destroyed within forty-eight hours after the date of receipt of the licensee's request.

(2) Notwithstanding the provisions of this section, the Nebraska State Patrol shall only maintain a log of dates of requests for criminal history record checks and unique approval numbers corresponding to such dates for not to exceed one year.

(3) Nothing in this section shall be construed to allow the state to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of handgun transactions, including the names or other identification of licensees and potential buyers or transferees including persons not otherwise prohibited by law from the receipt or possession of handguns.

Sec. 12. The Nebraska State Patrol shall establish a toll-free telephone number which shall be operational seven days a week between 8 a.m. and 10 p.m. for purposes of responding to requests under section 9 of this act. The Nebraska State Patrol shall employ and train such personnel as is necessary to expeditiously administer the provisions of sections 9 to 22 of this act.

Sec. 13. Any person who is denied the right to purchase or receive a handgun as a result of procedures established by sections 9 to 22 of this act may request amendment of the record pertaining to him or her by petitioning the Nebraska State Patrol. If the Nebraska State Patrol fails to amend the record within seven days, the person requesting the amendment may petition the county court of the county in which he or she resides for an order directing the patrol to amend the record. If the person proves by a preponderance of the evidence that the record should be amended, the court shall order the record be amended. If the record demonstrates that such person is not prohibited from receipt or possession of a handgun by state or federal law, the Nebraska State Patrol shall destroy any records it maintains which contain any information derived from the criminal history record check.

Sec. 14. The Nebraska State Patrol shall adopt and promulgate rules and regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to sections 9 to 22 of this act.

Sec. 15. A licensed importer, manufacturer, or dealer shall not be required to comply with the provisions of subdivision (2) of section 9 of this act and sections 10 to 22 of this act in the event of:

(1) Unavailability of telephone service at the licensed premises due to (a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises due to the location of such premises or (b) the interruption of telephone service by reason of hurricane, flood, natural disaster, other act of God, war, riot, or other bona fide emergency or reason beyond the control of the licensee; or

(2) Failure of the Nebraska State Patrol to comply reasonably with the requirements of sections 9 to 22 of this act.

Sec. 16. Compliance with sections 9 to 22 of this act shall be a defense by the Nebraska State Patrol and the licensee transferring a handgun in any cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer, of any handgun which has been shipped or transported in interstate or foreign commerce to any person who has been convicted in any court of any crime punishable by a term of more than one year.

Sec. 17. Sections 9 to 22 of this act shall not apply to:

(1) Any handgun, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898;

(2) Any replica of any firearm described in subdivision (1) of this section if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition and uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) Any firearm which is a curio or relic as defined by 27 C.F.R. 178.11.

Sec. 18. Any licensed importer, manufacturer, or dealer who knowingly and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 9 to 22 of this act or knowingly and intentionally disseminates any criminal history record information to any person other than the subject of such

information shall be guilty of a Class I misdemeanor.

Sec. 19. Any person who, in connection with the purchase, transfer, or attempted purchase of a handgun pursuant to sections 9 to 22 of this act, knowingly and intentionally makes any materially false oral or written statement or knowingly and intentionally furnishes any false identification intended or likely to deceive the licensee shall be guilty of a Class IV felony.

Sec. 20. Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of this act shall be guilty of a Class IV felony.

Sec. 21. For purposes of this act, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

Sec. 22. The Nebraska State Patrol shall provide an annual report to the Judiciary Committee of the Legislature which includes the number of inquiries made pursuant to sections 9 to 22 of this act for the prior calendar year, the number of such inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a handgun pursuant to state or federal law, the estimated costs of administering such sections, the number of instances in which a person requested amendment of the record pertaining to such person pursuant to section 13 of this act, and the number of instances in which a county court issued an order directing the patrol to amend a record.

Sec. 23. The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out this act.

Sec. 24. Any city or village ordinance existing on the effective date of this act shall not be preempted by this act.

Sec. 25. For purposes of this act:

(1) Antique handgun or pistol shall mean any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is

not readily available in the ordinary channels of commercial trade; and

(2) Handgun shall mean any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.