

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 937

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H937-ALH-15 [v.2]

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Comm. Sub. [NO]
Amends Title [YES]
Second Edition

Date _____, 2013

Representative Luebke

1 moves to amend the bill on page 1, line 27,
2 by changing the period on that line to a semicolon and adding the following:
3 "AND TO REQUIRE UNIVERSAL BACKGROUND CHECKS FOR THE PRIVATE
4 TRANSFER OF FIREARMS IN NORTH CAROLINA."; and

5
6 On page 8, lines 8-10,
7 By rewriting those lines to read:

8 "SECTION 13. Chapter 14 of the General Statutes is amended by adding a new
9 article to read:

10 'Article 53D.

11 'Private Transfers of Firearms.

12 **'§ 14-409.60. Private firearms transfers; background check required; penalty; definition.**

13 (a) The following definitions apply in this Article:

- 14 (1) Firearm.—The term does not include air rifles, air pistols, or BB guns.
- 15 (2) NICS. – The national instant criminal background check system created
16 by Public Law 103-159, known as the federal "Brady Handgun Violence
17 Prevention Act," the relevant portion of which is codified at 18 U.S.C. §
18 922(t).
- 19 (3) SBI. – State Bureau of Investigation.
- 20 (4) Transfer. – The sale or delivery of any firearm in this State by a transferor to
21 a transferee. The term includes redemption of a pawned firearm by any
22 person who is not licensed as a federal firearms licensee by the federal
23 Bureau of Alcohol, Tobacco, and Firearms or any of its successor agencies.
24 The term does not include the return or replacement of a firearm that had
25 been delivered to a federal firearms licensee for the sole purpose of repair or
26 customizing.
- 27 (5) Transferee. – A person who desires to receive or acquire a firearm from a
28 transferor. If a transferee is not a natural person, then each natural person
29 who is authorized by the transferee to possess the firearm after the transfer
30 shall undergo a background check as required by this Part before taking
31 possession of the firearm.

32 **'§ 14-409.61. Background check required for firearms transfers.**



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1 (a) This Article applies to all private transfers of firearms. It is unlawful for any person
2 who is not a federally licensed firearms dealer to transfer a firearm except as provided by this
3 Part.

4 (b) Requirements for Private Transfer of Firearms. – No transferor shall transfer or
5 attempt to transfer a firearm to a transferee before the transferor has done all of the following:

6 (1) Require that a background check, in accordance with G.S. 14-409.64, be
7 conducted of the prospective transferee.

8 (2) Obtain approval of a transfer from the SBI after a background check has
9 been requested by a licensed gun dealer, in accordance with G.S. 14-409.64.

10 (c) Background Check by Licensed Gun Dealer. – A prospective firearm transferor
11 who is not a licensed gun dealer shall arrange for a licensed gun dealer to obtain the
12 background check required by this section. A licensed gun dealer who obtains a background
13 check on a prospective transferee shall record the transfer and retain the records in the same
14 manner as when conducting a sale, rental, or exchange at retail. The licensed gun dealer shall
15 comply with all State and federal laws, including 18 U.S.C. § 922, as if the gun dealer were
16 transferring the firearm from the gun dealer's inventory to the prospective transferee. A
17 licensed gun dealer who obtains a background check for a prospective firearm transferor
18 pursuant to this section shall provide to the firearm transferor and transferee a copy of the results
19 of the background check, including the SBI's approval or disapproval of the transfer.

20 (d) Firearm Possession by Transferee .– A prospective firearm transferee under this
21 section shall not accept possession of the firearm unless the prospective firearm transferor has
22 obtained approval of the transfer from the SBI after a background check has been requested
23 by a licensed gun dealer, as described in subsection (c) of this section. A prospective firearm
24 transferee shall not knowingly provide false information to a prospective firearm transferor or
25 to a licensed gun dealer for the purpose of acquiring a firearm.

26 (e) Thirty-Day Approval Period. – If the SBI approves a transfer of a firearm pursuant
27 to this section, the approval shall be valid for 30 calendar days, during which time the
28 transferor and transferee may complete the transfer.

29 (f) Civil Liability. – A person who transfers a firearm in violation of the provisions
30 of this section may be jointly and severally liable for any civil damages proximately caused by
31 the transferee's subsequent use of the firearm.

32 (g) Exemptions. – The provisions of this section do not apply to any of the transfers
33 listed in subdivisions (1) through (9) of this subsection; however, nothing in this
34 subsection shall be interpreted to limit or otherwise alter the applicability of G.S. 14-408.1
35 concerning the unlawful purchase or transfer of firearms.

36 (1) A transfer of an antique firearm, as defined in 18 U.S.C. § 921(a)(16), as
37 amended, or a curio or relic, as defined in 27 C.F.R. § 478.11, as
38 amended.

39 (2) A transfer that is a bona fide gift or loan between immediate family
40 members, that are limited to spouses, parents, children, siblings,
41 grandparents, grandchildren, nieces, nephews, first cousins, aunts, and
42 uncles.

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- 1 (3) A transfer that occurs by operation of law or because of the death of a
2 person for whom the prospective transferor is an executor or administrator
3 of an estate or a trustee of a trust created in a will.
4 (4) A transfer that is temporary and occurs while in the home of the
5 unlicensed transferee if:
6 a. The unlicensed transferee is not prohibited from possessing
7 firearms; and
8 b. The unlicensed transferee reasonably believes that possession of the
9 firearm is necessary to prevent imminent death or serious bodily
10 injury to the unlicensed transferee.
11 (5) A temporary transfer of possession without transfer of ownership or a title to
12 ownership, which transfer takes place:
13 a. At a shooting range located in or on premises owned or occupied by
14 a duly incorporated organization organized for conservation
15 purposes or to foster proficiency in firearms;
16 b. At a target firearm shooting competition under the auspices of or
17 approved by a State agency or a nonprofit organization; or
18 c. While hunting, fishing, target shooting, or trapping if (i) the
19 hunting, fishing, target shooting, or trapping is legal in all places
20 where the unlicensed transferee possesses the firearm and (ii) the
21 unlicensed transferee holds any license or permit that is required for
22 such hunting, fishing, target shooting, or trapping.
23 (6) A transfer of a firearm that is made to facilitate the repair or maintenance
24 of the firearm; however, this subdivision does not apply unless all parties
25 who possess the firearm as a result of the transfer may legally possess a
26 firearm. For purposes of this subdivision, an owner, manager, or
27 employee of a business that repairs or maintains firearms may rely upon a
28 transferor's statement that the transferor may legally possess a firearm
29 unless the owner, manager, or employee has actual knowledge to the
30 contrary and may return possession of the firearm to the transferor upon
31 completion of the repairs or maintenance without a background check. Unless
32 a transferor of a firearm has actual knowledge to the contrary, the transferor
33 may rely upon the statement of an owner, manager, or employee of a
34 business that repairs or maintains firearms that no owner, manager, or
35 employee of the business is prohibited from possessing a firearm.
36 (7) Any temporary transfer that occurs while in the continuous presence of the
37 owner of the firearm.
38 (8) A temporary transfer for not more than 72 hours. A person who transfers
39 a firearm pursuant to this subdivision may be jointly and severally liable
40 for damages proximately caused by the transferee's subsequent unlawful
41 use of the firearm.
42 (9) A transfer of a firearm from a person serving in the armed forces of the
43 United States who will be deployed outside of the United States within the

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1 next 30 days to any immediate family member, that is limited to a spouse,
2 parent, child, sibling, grandparent, grandchild, niece, nephew, first cousin,
3 aunt, and uncle of the person.

4 (h) Penalty and Prohibited Possession of Firearm. – A person who violates a provision
5 of this section commits a Class 1 misdemeanor. In addition to any other penalty imposed for
6 the conviction of the misdemeanor, the person shall be prohibited from possessing a firearm
7 for two years, beginning on the date of the person's conviction.

8 (i) Report Violation. – When a person is convicted of violating a provision of this
9 section, the clerk of court shall report the conviction to the SBI and to the national instant
10 criminal background check system. The report shall include information indicating that the
11 person is prohibited from possessing a firearm for two years, beginning on the date of the
12 person's conviction.

13 **'§ 14-409.62. National instant criminal background check system; reporting.**

14 (a) Clerk of Court to Report Court Orders Regarding Mental Incapacity and Substance
15 Abuse. – The clerk of the court of every judicial district in the State shall send electronically
16 the following information to the SBI:

17 (1) The name of each person who has been adjudicated incompetent and a
18 guardian appointed pursuant to G.S. 35A-1120.

19 (2) The name of each person who has been committed for substance abuse by
20 order of the court to the custody of a facility under G.S. 122C-181 operated
21 by the Department of Health and Human Services; and

22 (3) The name of each person with respect to whom the court has entered an
23 order for involuntary commitment pursuant to Part 7 of Article 5 of Chapter
24 122C of the General Statutes.

25 (b) Report to SBI. – Not more than 48 hours after receiving notification of a person who
26 satisfies the description in subdivision (1), (2), or (3) of subsection (a) of this section, the clerk
27 of court shall report such fact to the SBI.

28 (c) Reason for Report. – Any report made by the clerk of court pursuant to this section
29 shall describe the reason for the report and indicate that the report is made in accordance with
30 18 U.S.C. § 922(g)(4).

31 (d) Cancel Record in Certain Circumstances. – The clerk of court shall take all
32 necessary steps to cancel a record made by the clerk in NICS if the person to whom the record
33 pertains makes a written request to the clerk and no less than three years before the date of the
34 written request any of the following occurred:

35 (1) The court entered an order pursuant to G.S. 35A-1130 terminating a
36 guardianship on a finding that the person is no longer an
37 incapacitated person, if the record in NICS is based on a finding of
38 incapacity.

39 (2) The period of commitment of the most recent order of commitment
40 or recommitment expired, or a court entered an order terminating
41 the person's incapacity or discharging the person from commitment
42 in the nature of habeas corpus, if the record in NICS is based on an
43 order of commitment to the custody of the unit in the Department of

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Health and Human Services that administers behavioral health programs and services, including those related to mental health and substance abuse; except that the clerk of court shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered under Part 8 of Article 5 of Chapter 122C of the General Statutes or discharged on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(3) The record in the case was sealed or the court entered an order discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on a court order for involuntary commitment.

(e) Correction of Record. – Pursuant to section 102(c) of the federal "NICS Improvement Amendments Act of 2007" (Pub. L. 110-180), a court, upon becoming aware that the basis upon which a record reported by the clerk of court pursuant to subsection (a) of this section does not apply or no longer applies, shall (i) update, correct, modify, or remove the record from any database that the federal or State government maintains and makes available to the national instant criminal background check system, consistent with the rules pertaining to the database and (ii) notify the Attorney General that such basis does not apply or no longer applies.

'§ 14-409.63. National instant criminal background check system; judicial process for awarding relief from federal prohibitions; legislative declaration.

(a) Legislative Declaration. – The purpose of this section is to set forth a judicial process whereby a person may apply or petition for relief from federal firearms prohibitions imposed pursuant to 18 U.S.C. § 922(d)(4), as permitted by the federal "NICS Improvement Amendments Act of 2007" (Pub. L. 110-180, Sec. 105).

(b) Eligibility. – A person to whom the sale or transfer of a firearm or ammunition is prohibited by 18 U.S.C. § 922(d)(4), or who is prohibited from shipping, transporting, possessing, or receiving a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(4) may petition for relief pursuant to this section in any of the following circumstances:

(1) The person has been adjudicated incompetent and a guardian appointed pursuant to G.S. 35A-1120.

(2) The person has been committed by order of the court to the custody of the facility under the Department of Health and Human Services that administers behavioral health programs and services, including those related to mental health and substance abuse.

(3) The court has entered an order for involuntary commitment pursuant to Part 7 of Article 5 of Chapter 122C of the General Statutes.

(c) Due Process. – In a court proceeding pursuant to this section, the petitioner shall have an opportunity to submit the petitioner's own evidence to the court concerning the petition. The court shall review the evidence, and the court shall create and thereafter maintain a record of the proceeding.

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1 (d) Proper Record. – In determining whether to grant relief to a petitioner pursuant to
2 this section, the court shall receive evidence concerning and shall consider all of the following:

3 (1) The circumstances regarding the firearms prohibitions imposed by 18 U.S.C.
4 § 922 (g)(4).

5 (2) The petitioner's record which must include at a minimum the petitioner's
6 mental health records and criminal history records.

7 (3) The petitioner's reputation which the court shall develop at a minimum
8 through character witness statements, testimony, or other character
9 evidence.

10 (e) Proper Findings. – Before granting relief to a petitioner pursuant to this section, the
11 court shall issue findings that (i) the petitioner is not likely to act in a manner that is
12 dangerous to public safety and (ii) granting relief to the petitioner is not contrary to the public
13 interest. If the court denies relief to a petitioner pursuant to this section, the petitioner may
14 petition the Court of Appeals to review the denial, including the record of the denying court. A
15 review of a denial shall be de novo in that the Court of Appeals may, but is not required to, give
16 deference to the decision of the denying court. In reviewing a denial, the Court of Appeals has
17 discretion, but is not required to, receive additional evidence necessary to conduct an adequate
18 review.

19 **'§ 14-409.64. National instant criminal background check system; state point of contact;**
20 **grounds for denial of firearm transfer; appeal; rule making; unlawful acts.**

21 (a) The SBI may serve as a State point of contact for implementation of 18 U.S.C. §
22 922(t), all federal regulations and applicable guidelines adopted pursuant thereto, and the NICS
23 system.

24 (b) The SBI, acting as the State point of contact for implementation of 18 U.S.C. §
25 922(t), shall transmit a request for a background check in connection with the prospective
26 transfer of a firearm to the NICS system and may also search other databases. The SBI shall
27 deny a transfer of a firearm to a prospective transferee if the transfer would violate 18 U.S.C. §
28 922(g) or (n) or result in the violation of any provision of State law, including, but not limited
29 to, G.S. 14-415.1, involving acts which if committed by an adult would constitute a burglary,
30 arson, or any felony involving the use of force or the use of a deadly weapon.

31 (c) In addition to the grounds for denial specified in subsection (b) of this section, the
32 SBI shall deny a transfer of a firearm if at any time the SBI transmits the request or searches
33 other databases, information indicates that the prospective transferee:

34 (1) Has been arrested for or charged with a crime for which the prospective
35 transferee, if convicted, would be prohibited under State or federal law from
36 purchasing, receiving, or possessing a firearm and either there has been no
37 final disposition of the case or the final disposition is not noted in the other
38 databases.

39 (2) Is the subject of an indictment, an information, or a felony complaint
40 alleging that the prospective transferee has committed a crime punishable by
41 imprisonment for a term exceeding one year as defined in 18 U.S.C. §.
42 921(a)(20), as amended, and either there has been no final disposition of the
43 case or the final disposition is not noted in the other databases.

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1 (3) Has failed to obtain firearm liability insurance as provided in Part 3 of this
2 Article.

3 (d) The SBI may cooperate with federal, State, and local law enforcement agencies to
4 perform or assist any other law enforcement agency in performing any firearm retrievals and to
5 assist in the prosecution of any rescinded transfers.

6 (e) Upon denial of a firearm transfer, the SBI shall notify the transferor and send notice
7 of the denial to NICS, pursuant to 18 U.S.C. § 922(t). In addition, the SBI shall immediately
8 send notification of the denial and the basis for the denial to the federal, State, and local law
9 enforcement agencies having jurisdiction over the area in which the transferee resides and in
10 which the transferor conducts any business.

11 Upon denial of a firearm transfer, the transferor shall provide the transferee with written
12 information prepared by the SBI concerning the procedure by which the transferee, within 30
13 days after the denial, may request a review of the denial and of the instant criminal background
14 check records that prompted the denial. Within 30 days of receiving such a request, the SBI
15 shall (i) perform a thorough review of the instant criminal background check records that
16 prompted the denial and (ii) render a final administrative decision regarding the denial within
17 30 days after receiving information from the transferee that alleges the transfer was improperly
18 denied.

19 In the case of any transfer denied pursuant to subsection (c) of this section, the inability of
20 the SBI to obtain the final disposition of a case that is no longer pending shall not constitute the
21 basis for the continued denial of the transfer.

22 (f) If the SBI reverses a denial, the SBI shall immediately request that the agency that
23 provided the records prompting the denial make a permanent change to such records if
24 necessary to reflect accurate information. In addition, the SBI shall provide immediate
25 notification of such reversal to all agencies and entities that had been previously notified of a
26 denial pursuant to subsection (e) of this section.

27 (g) If in the course of conducting any background check pursuant to this section,
28 whether the firearms transaction is approved or denied, the SBI obtains information that
29 indicates the prospective transferee is the subject of an outstanding warrant, the SBI shall
30 immediately provide notification of such warrant to the federal, State, and local law
31 enforcement agencies having jurisdiction over the area in which the transferee resides and in
32 which the transferor conducts any business.

33 (h) The Attorney General shall adopt rules as necessary to (i) carry out the duties of the
34 SBI as the State point of contact as those duties are set forth in federal law and assist in
35 implementing 18 U.S.C. § 922(t), all federal regulations and applicable guidelines adopted
36 pursuant thereto, and the NICS system and (ii) ensure the proper maintenance, confidentiality,
37 and security of all records and data provided pursuant to this section.

38 The rules adopted pursuant to this subsection shall include all of the following:

39 (1) Procedures whereby a prospective transferee whose transfer is denied may
40 request a review of the denial and of the instant criminal background check
41 records that prompted the denial.

42 (2) Procedures regarding retention of records obtained or created for purposes of
43 this section or for implementation of 18 U.S.C. § 922(t), except that the SBI

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Amendment Sponsor

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Committee Chair if Senate Committee Amendment

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