

2018 Regular Session

HOUSE BILL NO. 852

BY REPRESENTATIVES GARY CARTER AND CARPENTER

WEAPONS/FIREARMS: Creates the crime of illegally purchasing or selling a firearm

1 AN ACT

2 To enact R.S. 14:95.1.4, relative to offenses affecting the public safety; to create the crime  
3 of illegally purchasing or selling a firearm; to provide relative to background checks;  
4 to authorize a reasonable fee for such background checks; to provide criminal  
5 penalties; to provide for definitions; to provide for exceptions; to provide for the  
6 temporary transfer of firearms; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:95.1.4 is hereby enacted to read as follows:

9 §95.1.4. Illegally purchasing or selling a firearm

10 A.(1) Illegally purchasing a firearm is the intentional receiving, obtaining,  
11 or accepting delivery of a firearm from a person who is not a licensed firearms dealer  
12 in exchange for currency without obtaining the background information as provided  
13 for in Subsection B of this Section.

14 (2) Illegally selling a firearm is the intentional selling, delivering, or  
15 otherwise transferring ownership of a firearm by a person who is not a licensed  
16 firearms dealer in exchange for currency to any person without obtaining the  
17 background information as provided in Subsection B of this Section.

18 B.(1) When both parties to a prospective firearm transfer are unlicensed  
19 persons, the transferor and transferee shall appear jointly with the firearm at a

1 firearms dealer and request that the firearm dealer conduct a background check on  
2 the transferee.

3 (2) A firearms dealer who agrees to facilitate a background check pursuant  
4 to this Section shall process the transfer as though transferring the firearm from the  
5 dealer's own inventory to the transferee, complying with all requirements of federal  
6 and state law that would apply if the dealer were making such a transfer, including  
7 all background check and record-keeping requirements. This Section does not  
8 prevent the transferor from removing the firearm from the premises of the firearm  
9 dealer if the results of the background check indicate that the transferee is prohibited  
10 from possessing or receiving firearms under federal or state law.

11 (3) The transferor and transferee shall each complete, sign, and submit all  
12 federal and state forms necessary to process the background check and otherwise  
13 complete the transfer pursuant to this Section, and the firearms dealer shall indicate  
14 on the forms that the transfer is between unlicensed persons.

15 (4) A firearms dealer who agrees to conduct a background check pursuant  
16 to this Section may charge a reasonable fee for facilitating the transfer.

17 C. Neither a firearms dealer nor a transferor may transfer a firearm to a  
18 transferee if the results of the background check indicate that the transferee is  
19 prohibited from possessing or receiving firearms under federal or state law.

20 D. The provisions of this Section shall not apply to any of the following:

21 (1) The transfer of a firearm between family members.

22 (2) The transfer of a firearm by or to a firearm dealer.

23 (3) The transfer of a firearm by or to a law enforcement agency or any law  
24 enforcement officer, member of the armed forces, or security guard, if the officer,  
25 member or guard is acting within the course and scope of employment and official  
26 duties.

27 (4) The transfer of a firearm to an executor, administrator, trustee, or  
28 personal representative of an estate or trust that occurs by operation of law upon the  
29 death of the former owner of the firearm.

1           (5) The temporary transfer of a firearm to a person who is not prohibited  
2           from possessing or receiving firearms under federal or state law if the transfer is  
3           necessary to prevent imminent death or great bodily harm and the person's  
4           possession lasts only as long as necessary to prevent such imminent death or great  
5           bodily harm.

6           (6) The temporary transfer of a firearm to a person who is not prohibited  
7           from possessing or receiving firearms under federal or state law if the transfer and  
8           the transferee's possession of the firearm take place exclusively:

9           (a) At an established shooting range authorized by the governing body of the  
10          jurisdiction in which the range is located or, if no such authorization is required,  
11          operated consistently with local law in the jurisdiction.

12          (b) While hunting or trapping if the hunting or trapping is legal in all places  
13          where the transferee possesses the firearm and the transferee holds all licenses and  
14          permits required for such hunting or trapping.

15          (c) At a lawful organized competition involving the use of a firearm or for  
16          participation in or practice for a performance by an organized group that uses  
17          firearms as part of the performance.

18          (d) In the presence of the transferor.

19          E. For the purposes of this Section:

20          (1) "Background check" means the process described in 18 U.S.C. §922(t)  
21          of using the National Instant Criminal Background Check System to determine that  
22          a person is not prohibited from possessing or receiving firearms under federal or  
23          state law.

24          (2) "Family member" means a spouse or any of the following relations,  
25          whether by consanguinity, adoption, or step-relation: parent, child, sibling,  
26          grandparent, grandchild.

27          (3) "Firearm" means any pistol, revolver, rifle, shotgun, machine gun,  
28          submachine gun, or assault rifle, which is designed to fire or is capable of firing

1 fixed cartridge ammunition or from which a shot or projectile is discharged by an  
2 explosive.

3 (4) "Firearms dealer" means a person who holds a federal firearms license  
4 issued pursuant to 18 U.S.C. §923(a).

5 (5) "Person" means any individual, corporation, trust, company, firm,  
6 partnership, association, club, organization, society, joint stock company, or other  
7 legal entity.

8 (6) "Transfer" means to sell, furnish, give, lend, deliver or otherwise provide,  
9 with or without consideration.

10 (7) "Transferee" means an unlicensed person who wishes or intends to  
11 receive a firearm from another unlicensed person.

12 (8) "Transferor" means an unlicensed person who wishes or intends to  
13 transfer a firearm to another unlicensed person.

14 (9) "Unlicensed person" means a person who is not a firearm dealer.

15 F. Whoever violates the provisions of this Section for a first offense shall be  
16 fined not less than five hundred dollars, imprisoned for not less than six months, or  
17 both. For a second or subsequent offense, the offender shall be fined not more than  
18 one thousand dollars nor more than five thousand dollars, imprisoned, with or  
19 without hard labor, for not less than one year nor more than five years, or both.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 852 Original

2018 Regular Session

Gary Carter

**Abstract:** Creates the crime of illegally purchasing or selling a firearm.

Proposed law creates the crime of illegally purchasing or selling a firearm and includes as an element of the offense the transfer of a firearm without the proper background check. The crime requires unlicensed persons wishing to purchase or sell a firearm to obtain a valid background check through a licensed firearms dealer. Failure to do so results in a violation of proposed law.

Proposed law provides for definitions.

Proposed law provides for exceptions to the crime.

Proposed law provides penalties for first offense of a fine of not more than \$500, imprisonment for not more than six months, or both, and for a second or subsequent offense, a fine not less than \$1,000 nor more than \$5,000, imprisonment with or without hard labor for not less than one year nor more than five years, or both.

(Adds R.S. 14:95.1.4)