



**Senate Counsel, Research, and Fiscal Analysis**

State of Minnesota

# **Background Check Requirements for Firearm Transfers**

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This memorandum addresses background check requirements for firearm transfers in Minnesota.

## **Summary**

Whether a background check is required for a firearm transfer<sup>1</sup> in Minnesota is determined by whether a federal firearms dealer is involved. The scope of the check (if one is required) is based on the type of firearm being transferred.<sup>2</sup>

In a nutshell, a person who purchases a firearm (any type) from a federal dealer must undergo a National Instant Criminal Background Check System (NICS) check. If the firearm being purchased from the dealer is a pistol or a semiautomatic military-style assault weapon<sup>3</sup> (SAMSAW), Minnesota law requires that the transferee produce a valid permit to purchase (i.e., a transferee permit) or permit to carry (both of which require background checks at the time of issuance) or that the dealer file a transfer report with local law enforcement (which prompts a background check).

No federal or Minnesota mandated background check is required for transfers of firearms (any type) between private parties (no dealer involvement) living in Minnesota.

## **Federal Dealers**

### Federal Requirements

Federal law requires a person who wishes to engage in the selling of firearms to obtain a Federal Firearms License (FFL). An FFL must comply with applicable federal and state laws when acquiring and disposing of firearms, including record keeping, reporting, and ensuring that required background checks on transferees are conducted.

FFLs are licensed to operate from a fixed location but are not required to conduct business on commercial premises and may temporarily conduct business from other locations within the state, such as a gun show. Regardless of where a transfer takes place, an FFL must comply with applicable law, including background checks.

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<sup>1</sup> A transfer is a defined concept. Under Minnesota law, it includes most forms of handovers, including gifts. However, there are important exceptions, including specified short-term handovers (repairs, certain loans, etc.).

<sup>2</sup> To a degree, the type of firearm is also relevant to the question of whether a background check is required. The transfer of an antique firearm does not necessitate a background check. Thus, for purposes of this memorandum, references to firearms do not include antique firearms.

<sup>3</sup> As defined in Minnesota law.

Under federal law, it's unlawful for any person other than a licensed dealer to *engage in the business*<sup>4</sup> of dealing in firearms. While typical bricks and mortar businesses that sell firearms such as Cabela's would obviously need to be licensed, things get murkier in some cases involving individuals. There's no real clear objective line that delineates when exactly a person is "engaged in the business," thus activating the license requirement and, further, the background check requirement.

When an FFL transfers a firearm to a private citizen who is not an FFL, the FFL must require the transferee to provide identification, complete an application addressing the person's eligibility to possess a firearm, and submit to and pass a point-of-sale background check using the FBI's NICS.

### Additional Minnesota Requirement

Minnesota requires an additional step for FFLs (but only for pistol and SAMSAW transfers-not for other types of long guns). For these transfers, an additional state background check is required. This can be accomplished by the transferee producing either a permit to purchase or a permit to carry. Both of these would need to have been acquired by the transferee beforehand. A permit to purchase is obtained through local law enforcement, is free, is valid for one year, and may be used for an unlimited number of transfers. A permit to carry is obtained through the local sheriff, costs money, requires specified training regarding firearm safety and laws, is valid for five years, requires annual electronic background check updates and authorizes additional checks at the discretion of law enforcement, and may be used for unlimited transfers.

The alternative for the transferee to the permit to purchase or carry options is to have the FFL file a transfer report with local law enforcement. This would occur at the point of the sale. A transfer report is free but is valid only for the specific transfer (which can involve multiple firearms) and requires a waiting period of up to five business days/seven days (unless shortened or waived) to give law enforcement the necessary time to conduct the background check.

### **Private Parties**

There is no requirement in federal or Minnesota law that a firearm transfer between two private parties living in Minnesota involve a background check.<sup>5 6</sup>

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<sup>4</sup> A person engages in the business when the person "devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but [not when the] person...makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or... sells all or part of [the person's] personal collection of firearms."

<sup>5</sup> There is a potential incentive for a private party to use the permitting system described earlier (which would include a background check). Under Minnesota law, it's a gross misdemeanor for a private party to transfer a pistol or SAMSAW without employing the transfer report requirements (as a practical matter, this also includes a permit to purchase or carry) IF the transferee uses the weapon within a year in furtherance of a felony crime of violence AND either the transferee was ineligible to possess the weapon at the time of the transfer or it was reasonably foreseeable at the time of transfer that the transferee was likely to use or possess the weapon in furtherance of a felony crime of violence.

<sup>6</sup> If one of the parties lives outside of Minnesota, the transaction must be routed through an FFL (which would require a background check).

## **Information on Background Checks**

### NICS

The federal NICS check is a check of three federal databases (the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index) maintained by the FBI. These databases contain various records related to firearms eligibility, including criminal convictions, protection orders, and mental health records. These databases rely, in part, on the voluntary submission of data from states and local units of government. Thus, due to a lack of uniformity in reporting, the databases are not complete. Over the years, the federal government has attempted to increase the submission of information by states through financial rewards and penalties.

The NICS check is a nearly instantaneous one (typically taking only a few minutes) conducted at the point of sale. It is valid for a single transaction (which can involve multiple firearms) for up to 30 days from the initial check. Assuming the check is clean, the firearm is transferred. If denied, the transfer doesn't go through. Some cases are delayed for further research. In these cases, the FFL must not transfer the firearm until it receives a positive verdict. However, if no verdict is given within three business days, the transfer may proceed.

### Minnesota

When a background check is required under Minnesota law, it proceeds under the permit to purchase, the permit to carry, or the transfer report laws. The permit to purchase or carry will have been issued before the transfer is agreed to, while the transfer report would be made after the agreement is reached and result in a delay of the transfer pending the background check.

Because of this, it is not a particularly common method to use.

The actual background checks are substantively identical. Local law enforcement (either the sheriff or police chief) is tasked with checking criminal records, histories, and warrant information through NICS and Minnesota systems and commitment information (mental health, chemical dependency, etc.) must be obtained from the Commissioner of Human Services. Reasonable efforts must be made to check other relevant record-keeping systems. Unlike the NICS check, these checks are not instantaneous. The sheriff or police chief has seven days/five business days to decide on permits to purchase and transfer reports and 30 days to decide on permits to carry.