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**HOUSE BILL 310**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Gail C. Beam**

**AN ACT**

**RELATING TO FIREARMS; ENACTING THE HANDGUN SAFETY STANDARD ACT; ESTABLISHING A COMMISSION; REQUIRING THE COMMISSION TO ADOPT A SAFETY PERFORMANCE STANDARD FOR HANDGUNS; PRESCRIBING PENALTIES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the "Handgun Safety Standard Act".**

**Section 2. DEFINITIONS.--As used in the Handgun Safety Standard Act:**

**A. "antique firearms" means:**

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

**(2) a replica of any firearm described in**

1 Paragraph (1) of this subsection if the replica:

2 (a) is not designed or redesigned for  
3 using rimfire or conventional centerfire fixed ammunition; or

4 (b) uses rimfire or conventional  
5 centerfire fixed ammunition that is no longer manufactured in  
6 the United States and that is not readily available in the  
7 ordinary channels of commercial trade;

8 B. "authorized user" means the person who owns the  
9 handgun or a person to whom the owner has given consent to use  
10 the handgun;

11 C. "commission" means the handgun standard  
12 commission;

13 D. "handgun" means:

14 (1) a firearm that has a short stock and is  
15 designed to be held and fired by the use of a single hand; and

16 (2) any combination of parts from which a  
17 firearm described in Paragraph (1) of this subsection can be  
18 assembled;

19 E. "handgun manufacturer" means a person engaged  
20 in the business of manufacturing handguns for the purpose of  
21 sale or distribution;

22 F. "pawnbroker" means a person whose business or  
23 occupation includes the taking or receiving, by the way of  
24 pledge or pawn, of a firearm as security for the payment or  
25 repayment of money;

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1           G. "person" means an individual, corporation,  
2 company, association, firm, partnership, society or joint  
3 stock company; and

4           H. "seller" means a person:

5                 (1) engaged in the business of selling  
6 firearms at wholesale or retail;

7                 (2) engaged in the business of repairing  
8 firearms or of making or fitting special barrels, stocks or  
9 trigger mechanisms to firearms; or

10                (3) a person who is a pawnbroker.

11           Section 3. HANDGUN STANDARD COMMISSION--CREATION.--

12           A. The "handgun standard commission" shall be  
13 established within six months following the passage of the  
14 Handgun Safety Standard Act in order to promulgate an  
15 appropriate performance standard that responds to the need for  
16 the improved safety of handguns.

17           B. The commission shall be composed of nine  
18 members, including:

19                 (1) two members of the house of  
20 representatives appointed by the speaker of the house,  
21 including one member of each major political party represented  
22 in the house of representatives;

23                 (2) two members of the senate appointed by  
24 the president pro tempore of the senate, including one member  
25 of each major political party represented in the senate;

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- 1 (3) the attorney general or his designee;  
2 (4) the chief of the New Mexico state police  
3 or his designee;  
4 (5) the secretary of health or his designee;  
5 (6) a representative of the handgun  
6 manufacturing industry appointed by the governor; and  
7 (7) a mechanical engineer appointed by the  
8 governor.

9 C. Commission members shall be reimbursed pursuant  
10 to the provisions of the Per Diem and Mileage Act.

11 D. Staff services for the commission shall be  
12 provided by the attorney general's office.

13 E. The commission shall exist for the period  
14 during which the standard is promulgated. Once the commission  
15 has ceased to exist, the governor, if he deems necessary, may  
16 reestablish the commission for a period of time designated  
17 by the governor.

18 F. In addition to promulgating a performance  
19 standard, the commission shall designate the existing state  
20 government agency that will be responsible for administering,  
21 advertising, implementing and enforcing the standard. The  
22 commission's designation of an agency requires approval by the  
23 governor.

24 Section 4. PROMULGATION OF A SAFETY STANDARD. --

25 A. On or before one year after the establishment

1 of the commission, the commission shall adopt a handgun safety  
2 performance standard for all handguns manufactured, possessed,  
3 sold, offered for sale, traded, transferred, shipped, leased,  
4 distributed or acquired within this state. The standard shall  
5 require, but is not limited to, the following:

6 (1) a handgun must be personalized so that it  
7 can only be fired when operated by that handgun's authorized  
8 user;

9 (2) the technology creating personalized  
10 handguns shall be incorporated into the design of the handgun  
11 and be part of its original equipment and not an accessory;  
12 and

13 (3) personalized handguns shall not be  
14 manufactured so as to permit the personalized characteristics  
15 to be readily deactivated.

16 B. The commission shall formulate the necessary  
17 testing procedure to determine if a handgun complies with the  
18 commission's standard.

19 C. The commission shall designate one or more  
20 independent laboratories to determine whether handguns comply  
21 with the commission's standard. The laboratories shall use  
22 the test method formulated by the commission to determine  
23 compliance.

24 D. In accordance with the standard promulgated by  
25 the commission, handgun manufacturers wishing to manufacture,

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1 sell, offer for sale or transfer handguns in the state shall  
2 submit a prototype of the handgun model for testing, at the  
3 handgun manufacturer's cost, to one of the independent  
4 laboratories designated by the commission.

5 E. The laboratory shall issue a report directly to  
6 the agency designated by the commission to oversee the  
7 administration and implementation of the standard, and send a  
8 copy of the report to the handgun manufacturer indicating  
9 whether the submitted handgun met or did not meet the safety  
10 standard. If the submitted handgun did not meet the safety  
11 standard, the report shall describe the reasons therefor.

12 F. If the handgun model fails to meet the safety  
13 standard, it shall not be manufactured, possessed, sold,  
14 offered for sale, traded, transferred, shipped, leased,  
15 distributed or acquired by anyone in this state until it has  
16 been modified to meet the commission's standard and has passed  
17 the independent laboratory test on resubmission.

18 G. If the handgun model meets the safety  
19 standard, the designated agency shall issue a certificate  
20 stating that the handgun model meets the commission's  
21 standard, and the words "certified personalized handgun" or an  
22 equivalent label, as established by the commission, shall be  
23 imprinted on the approved handguns at the handgun  
24 manufacturer's expense.

25 H. Once the handgun model is deemed to meet the

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1 safety standard, the handgun manufacturer, seller or possessor  
2 shall not alter the design of the handgun in any manner  
3 affecting the safety of the handgun.

4 Section 5. ENFORCEMENT. --

5 A. On or after four years from the date of the  
6 adoption of the commission's safety standard, handguns that do  
7 not meet the standard prescribed by the commission pursuant to  
8 the provisions of the Handgun Safety Standard Act shall not be  
9 manufactured, possessed, sold, offered for sale, traded,  
10 transferred, shipped, leased, distributed or acquired in this  
11 state.

12 B. If any police officer, during the course of  
13 official duties and operating within existing constitutional  
14 constraints on police searches and seizures, discovers  
15 a handgun that does not meet the commission's safety standard,  
16 that officer shall take possession of the handgun. The  
17 handgun shall be forfeited to the state and shall be  
18 destroyed.

19 C. The attorney general may bring an action on  
20 behalf of the state against sellers, manufacturers or  
21 possessors of handguns to enjoin violations of the Handgun  
22 Safety Standard Act and for such other relief as may be  
23 appropriate.

24 Section 6. EXEMPTIONS. -- The following handguns are  
25 exempt from the provisions of the Handgun Safety Standard Act:

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1           A. antique firearms legally purchased or acquired  
2 in accordance with current laws;

3           B. handguns manufactured prior to four years from  
4 the date of the adoption of the commission's safety standard.  
5 However, such handguns shall not be sold, offered for sale,  
6 traded, transferred, shipped, leased or distributed by dealers  
7 after four years from the date of the adoption of the  
8 commission's safety standard;

9           C. handguns purchased by police departments,  
10 sheriffs and law enforcement officers and members of the armed  
11 forces of the state and the United States;

12           D. handguns possessed by law enforcement officers  
13 on official assignment in this state from any state that by  
14 agreement permits police officers from this state while on  
15 assignment in that state to carry firearms without  
16 registration; and

17           E. handguns that are a part of the official  
18 equipment of a federal agency.

19           Section 7. PENALTIES. --

20           A. A person who violates the provisions of the  
21 Handgun Safety Standard Act by manufacturing, possessing,  
22 selling, offering for sale, trading, transferring or acquiring  
23 a handgun that has not been certified by an independent  
24 testing laboratory as meeting the standard, and does not fall  
25 within the exemptions stated in the Handgun Safety Standard

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1 Act, is guilty of a fourth degree felony and shall be  
2 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
3 1978.

4 B. A person who violates the provisions of the  
5 Handgun Safety Standard Act by altering the personalized  
6 characteristics of a handgun manufactured, possessed, sold,  
7 offered for sale, traded, transferred, shipped, leased,  
8 distributed or acquired after four years from the date of the  
9 adoption of the commission's original standard is guilty of a  
10 misdemeanor and shall be sentenced pursuant to the provisions  
11 of Section 31-19-1 NMSA 1978.

12 C. The penalties set forth in this section apply  
13 to all public and private manufacturers, possessors, sales,  
14 offers for sale, trades, transfers, shipments, leases,  
15 distributions or acquisitions of handguns.

16 Section 8. LIABILITY. --

17 A. A person who discharges a handgun that does not  
18 meet the commission's standard, and does not fall within the  
19 exemptions stated in the Handgun Safety Standard Act, and  
20 thereby causes personal injury to another person, shall be  
21 absolutely liable for damages that resulted from the handgun  
22 not meeting the commission's standard.

23 B. A person who owns a handgun that does not meet  
24 the commission's standard, and that is discharged by an  
25 unauthorized person, and does not fall within the exemptions

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1 stated in the Handgun Safety Standard Act, and thereby causes  
2 personal injury to another person, shall be absolutely liable  
3 for damages that resulted from the handgun not meeting the  
4 commission's standard.

5 C. This section shall not apply when the discharge  
6 of the handgun was legally justified, including when the  
7 discharge of the handgun was by a law enforcement officer in  
8 the line of duty or when the discharge of the handgun was for  
9 self-defense.

10 D. Compliance with the safety standard issued  
11 pursuant to the Handgun Safety Standard Act does not exempt a  
12 person from liability under common law.

13 Section 9. SEVERABILITY.--If any part or application of  
14 the Handgun Safety Standard Act is held invalid, the remainder  
15 of its application to other situations or persons shall not be  
16 affected.

17 Section 10. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2001.