

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 310

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

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, a person to whom the owner has given consent to use  
10 the handgun or a person that the owner has enabled to use the  
11 handgun;

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

14 D. "grace period" means a period of time, not to  
15 exceed one hundred eighty days, that a new resident of this  
16 state has to bring a handgun into compliance with the  
17 provisions of the Handgun Safety Standard Act;

18 E. "handgun" means a loaded or unloaded pistol,  
19 revolver or firearm that will, is designed to or may readily  
20 be converted to expel a projectile by the action of an  
21 explosion, and the barrel length of which, not including a  
22 revolving, detachable or magazine breech, does not exceed  
23 twelve inches;

24 F. "handgun manufacturer" means a person engaged  
25 in the business of manufacturing handguns for the purpose of

1 sale or distribution;

2 G. "integrated mechanical safety device" means a  
3 disabling or locking device that is built into a handgun and  
4 that is designed to prevent the handgun from being discharged,  
5 unless the device is deactivated by an authorized user.

6 "Integrated mechanical safety device" does not mean a trigger  
7 safety lock that is attached to a handgun;

8 H. "pawnbroker" means a person whose business or  
9 occupation includes the taking or receiving, by the way of  
10 pledge or pawn, of a firearm as security for the payment or  
11 repayment of money;

12 I. "person" means an individual, corporation,  
13 company, association, firm, partnership, society or joint  
14 stock company;

15 J. "personalized handgun" means:

16 (1) a handgun manufactured with an integrated  
17 mechanical safety device built into it; or

18 (2) a handgun that has an integrated  
19 mechanical safety device built into it following manufacture  
20 of the handgun; and

21 K. "seller" means a person:

22 (1) engaged in the business of selling  
23 firearms at wholesale or retail;

24 (2) engaged in the business of repairing  
25 firearms or of making or fitting special barrels, stocks or

1 trigger mechanisms to firearms; or

2 (3) a person who is a pawnbroker.

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

4 A. The "handgun standard commission" shall be  
5 established within six months following the passage of the  
6 Handgun Safety Standard Act in order to promulgate an  
7 appropriate performance standard that responds to the need for  
8 the improved safety of handguns.

9 B. The commission shall be composed of nine  
10 members, including:

11 (1) two members of the house of  
12 representatives appointed by the speaker of the house,  
13 including one member of each major political party represented  
14 in the house of representatives;

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

18 (3) the attorney general or his designee;

19 (4) the chief of the New Mexico state police  
20 or his designee;

21 (5) the secretary of health or his designee;

22 (6) a representative of the handgun  
23 manufacturing industry appointed by the governor; and

24 (7) a mechanical engineer appointed by the  
25 governor.

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

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

5 E. The commission shall exist for the period  
6 during which the standard is promulgated. Once the commission  
7 has ceased to exist, the governor, if he deems necessary, may  
8 reestablish the commission for a period of time designated  
9 by the governor.

10 F. In addition to promulgating a performance  
11 standard, the commission shall designate the existing state  
12 government agency that will be responsible for administering,  
13 advertising, implementing and enforcing the standard. The  
14 commission's designation of an agency requires approval by the  
15 governor.

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

17 A. On or before one year after the establishment  
18 of the commission, the commission shall adopt a handgun safety  
19 performance standard for all handguns manufactured, possessed,  
20 sold, offered for sale, traded, transferred, shipped, leased,  
21 distributed or acquired within this state. The standard shall  
22 require, but is not limited to, the following:

23 (1) a personalized handgun must be  
24 manufactured so that it can only be fired when operated by  
25 that handgun's authorized user; and

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underscored material = new  
[bracketed material] = delete

1 (2) the technology creating personalized  
2 handguns shall be incorporated into the design of the handgun  
3 so that the personalized characteristics cannot be readily  
4 deactivated.

5 B. The commission shall formulate the necessary  
6 testing procedure to determine if a handgun complies with the  
7 commission's standard.

8 C. The commission shall designate one or more  
9 independent laboratories to determine whether handguns comply  
10 with the commission's standard. The laboratories shall use  
11 the test method formulated by the commission to determine  
12 compliance.

13 D. In accordance with the standard promulgated by  
14 the commission, handgun manufacturers wishing to manufacture,  
15 sell, offer for sale or transfer personalized handguns in the  
16 state shall submit a prototype of the personalized handgun  
17 model for testing, at the handgun manufacturer's cost, to one  
18 of the independent laboratories designated by the commission.

19 E. The laboratory shall issue a report directly to  
20 the agency designated by the commission to oversee the  
21 administration and implementation of the standard, and send a  
22 copy of the report to the handgun manufacturer indicating  
23 whether the submitted personalized handgun met or did not meet  
24 the safety standard. If the submitted personalized handgun  
25 did not meet the safety standard, the report shall describe

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1 the reasons therefor.

2 F. If the personalized handgun model fails to meet  
3 the safety standard, it shall not be manufactured, possessed,  
4 sold, offered for sale, traded, transferred, shipped, leased,  
5 distributed or acquired by anyone in this state until it has  
6 been modified to meet the commission's standard and has passed  
7 the independent laboratory test on resubmission.

8 G. If the personalized handgun model meets the  
9 safety standard, the designated agency shall issue a  
10 certificate stating that the personalized handgun model meets  
11 the commission's standard, and the words "certified  
12 personalized handgun" or an equivalent label, as established  
13 by the commission, shall be imprinted on the approved  
14 personalized handguns at the handgun manufacturer's expense.

15 H. Once the personalized handgun model is deemed  
16 to meet the safety standard, the handgun manufacturer, seller  
17 or possessor shall not alter the design of the personalized  
18 handgun in any manner affecting the safety of the personalized  
19 handgun.

20 Section 5. ENFORCEMENT.--

21 A. On or after four years from the date of the  
22 adoption of the commission's safety standard, handguns that do  
23 not meet the standard prescribed by the commission pursuant to  
24 the provisions of the Handgun Safety Standard Act shall not be  
25 manufactured, possessed, sold, offered for sale, traded,

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1 transferred, shipped, leased, distributed or acquired in this  
2 state.

3 B. If any police officer, during the course of  
4 official duties and operating within existing constitutional  
5 constraints on police searches and seizures, discovers  
6 a handgun that does not meet the commission's safety standard  
7 and that is not exempt pursuant to Section 6 of the Handgun  
8 Safety Standard Act, that officer shall take possession of the  
9 handgun. The handgun shall be forfeited to the state in  
10 accordance with state law and shall be destroyed.

11 C. The attorney general may bring an action on  
12 behalf of the state against sellers, manufacturers or  
13 possessors of handguns to enjoin violations of the Handgun  
14 Safety Standard Act and for such other relief as may be  
15 appropriate.

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

18 A. antique firearms legally purchased or acquired  
19 in accordance with current laws;

20 B. handguns manufactured prior to four years from  
21 the date of the adoption of the commission's safety standard.  
22 However, such handguns shall not be sold, offered for sale,  
23 traded, transferred, shipped, leased or distributed by dealers  
24 after four years from the date of the adoption of the  
25 commission's safety standard, unless the seller is not the



1 owner of the handgun and is selling the handgun as the sales  
2 agent for a private party;

3 C. handguns purchased for official use by police  
4 departments, sheriffs and law enforcement officers and members  
5 of the armed forces of the state and the United States;

6 D. handguns possessed by law enforcement officers  
7 on official assignment in this state from any state that by  
8 agreement permits police officers from this state while on  
9 assignment in that state to carry firearms without  
10 registration;

11 E. handguns that are a part of the official  
12 equipment of a state or federal agency;

13 F. handguns that are inherited by a person  
14 pursuant to a will or an intestate proceeding;

15 G. handguns possessed by a nonresident when the  
16 nonresident is traveling through this state or if the  
17 nonresident is in this state for less than one hundred eighty  
18 days; and

19 H. handguns that are covered by the grace period  
20 provided to new residents of this state.

21 Section 7. PENALTIES. --

22 A. A person who knowingly violates the provisions  
23 of the Handgun Safety Standard Act by manufacturing,  
24 possessing, selling, offering for sale, trading, transferring  
25 or acquiring a handgun that has not been certified by an

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1 independent testing laboratory as meeting the standard, and  
2 does not fall within the exemptions stated in the Handgun  
3 Safety Standard Act, is guilty of a fourth degree felony and  
4 shall be sentenced pursuant to the provisions of Section  
5 31-18-15 NMSA 1978.

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

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

18 Section 8. LIABILITY. --

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

25 B. A person who owns a handgun that does not meet  
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1 the commission's standard, and that is discharged by an  
2 unauthorized person, and does not fall within the exemptions  
3 stated in the Handgun Safety Standard Act, and thereby causes  
4 personal injury to another person, shall be absolutely liable  
5 for damages that resulted from the handgun not meeting the  
6 commission's standard. The provisions of this subsection do  
7 not apply when the handgun is stolen from its owner.

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

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

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

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