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**HOUSE BILL 446**

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

**INTRODUCED BY**

**Di an ne Ham il ton**

**AN ACT**

**RELATING TO FIREARMS; ENACTING THE LICENSE TO CARRY ACT;  
REQUIRING A LICENSE TO CARRY A CONCEALED LOADED HANDGUN;  
CREATING A FUND; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978; MAKING AN APPROPRIATION.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1  
through 14 of this act may be cited as the "License to Carry  
Act".**

**Section 2. [NEW MATERIAL] FINDINGS. --The legislature  
finds that as a matter of public policy it is necessary to  
provide statewide, uniform standards for the issuance of  
concealed handgun licenses for security and defense. The  
legislature finds further that it is necessary to occupy the  
entire field of regulation regarding the carrying of concealed**

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1 handguns to ensure effective enforcement.

2 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
3 License to Carry Act:

4 A. "applicant" means a person seeking a license to  
5 carry a concealed handgun;

6 B. "concealed handgun" means a loaded handgun that  
7 is not visible to the ordinary observations of a reasonable  
8 person;

9 C. "handgun" means a firearm that is designed or  
10 adapted to be fired with one hand; and

11 D. "licensee" means a person holding a valid  
12 concealed handgun license issued to him by the county sheriff.

13 Section 4. [NEW MATERIAL] DATE OF LICENSURE--PERIOD OF  
14 LICENSURE. --Effective July 1, 2001, county sheriffs are  
15 authorized to issue concealed handgun licenses to qualified  
16 applicants. Concealed handgun licenses shall be valid  
17 throughout the state for a period of five years from the date  
18 of issuance unless the license is suspended or revoked.

19 Section 5. [NEW MATERIAL] APPLICANT QUALIFICATIONS. --

20 A. The county sheriff shall issue a concealed  
21 handgun license if the applicant:

22 (1) is a citizen of the United States;

23 (2) is a resident of New Mexico or is a  
24 member of the armed forces whose permanent duty station is  
25 located in New Mexico or is a dependent of such a member;

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1 (3) is twenty-one years of age or older;  
2 (4) is not a fugitive from justice;  
3 (5) has not been convicted of a felony in New  
4 Mexico or any other state or pursuant to the laws of the  
5 United States;

6 (6) is not currently under indictment for a  
7 felony criminal offense in New Mexico or any other state or  
8 pursuant to the laws of the United States;

9 (7) is not otherwise prohibited by federal  
10 law from purchasing or possessing a firearm;

11 (8) has not been adjudicated mentally  
12 incompetent or involuntarily committed to a mental  
13 institution;

14 (9) is not addicted to alcohol or controlled  
15 substances, as evidenced by involuntary commitment to a  
16 residential treatment facility within the five-year period  
17 immediately preceding application for a concealed handgun  
18 license; and

19 (10) has satisfactorily completed a firearms  
20 training course approved by the department of public safety.

21 B. The county sheriff shall deny a concealed  
22 handgun license if the applicant has been convicted of, pled  
23 guilty to or entered a plea of nolo contendere to one or more  
24 misdemeanor offenses involving crimes of violence within a  
25 five-year period immediately preceding application for a

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1 concealed handgun license or if the applicant has been  
2 convicted of one or more misdemeanor offenses involving  
3 driving while under the influence of intoxicating liquor or  
4 drugs or the possession or abuse of a controlled substance  
5 within a five-year period immediately preceding application  
6 for a concealed handgun license.

7 Section 6. [NEW MATERIAL] APPLICATION FORM - SCREENING OF  
8 APPLICANTS - FEE - LIMITATIONS ON LIABILITY. - -

9 A. Applications for concealed handgun licenses  
10 shall be made readily available at county sheriffs' offices.  
11 Applications for concealed handgun licenses shall be  
12 completed, under oath, on a form designed by the department of  
13 public safety and shall include the following:

14 (1) the applicant's name, current address,  
15 date of birth, place of birth, height, weight, gender, hair  
16 color, eye color and driver's license number or other state-  
17 issued identification number;

18 (2) a statement that the applicant is aware  
19 of, understands and is in compliance with the requirements for  
20 licensure set forth in the License to Carry Act;

21 (3) a statement that the applicant has been  
22 furnished a copy of the License to Carry Act; and

23 (4) a conspicuous warning that the  
24 application form is executed under oath and that a materially  
25 false answer or the submission of a materially false document

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1 to the county sheriff may result in denial or revocation of a  
2 concealed handgun license and may subject the applicant to  
3 criminal prosecution for perjury as provided in Section  
4 30-25-1 NMSA 1978.

5 B. The applicant shall submit the following items  
6 to the county sheriff:

- 7 (1) a completed application form;
- 8 (2) a nonrefundable application fee in an  
9 amount not to exceed fifty dollars (\$50.00);
- 10 (3) two full sets of fingerprints;
- 11 (4) a certified copy of a certificate of  
12 completion for a firearms training course approved by the  
13 department of public safety;
- 14 (5) two color photographs of the applicant;
- 15 (6) a certified copy of a birth certificate;
- 16 (7) proof of residency in New Mexico; and
- 17 (8) proof of United States citizenship, if  
18 the applicant was not born in the United States.

19 C. A law enforcement agency may fingerprint an  
20 applicant and may charge a fee not to exceed ten dollars  
21 (\$10.00).

22 D. Upon receipt of the items listed in Subsection  
23 B of this section, the county sheriff shall make a reasonable  
24 effort to determine if the applicant is qualified to receive a  
25 concealed handgun license. The county sheriff shall conduct

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1 an appropriate check of available records and shall forward  
2 the applicant's fingerprints to the federal bureau of  
3 investigation for a national criminal records check. No later  
4 than thirty days after receiving the application items, the  
5 county sheriff shall check available records to verify the  
6 accuracy of the application items.

7 E. A person employed by a county sheriff's office  
8 in the state shall not be criminally or civilly liable for  
9 acts committed by a licensee unless the person had actual  
10 knowledge at the time the concealed handgun license was issued  
11 that the licensee was prohibited by law from being issued the  
12 license. An organization or individual approved by the county  
13 sheriff to offer a firearms training course shall not be  
14 criminally or civilly liable for acts committed by a licensee.

15 Section 7. [NEW MATERIAL] COUNTY SHERIFF RESPONSE TO  
16 APPLICATION--RIGHT TO APPEAL--LICENSE RENEWAL--SUSPENSION OR  
17 REVOCATION OF LICENSE. --

18 A. No later than sixty days following receipt by  
19 the county sheriff of the completed application items, the  
20 county sheriff shall:

21 (1) issue a concealed handgun license to an  
22 applicant; or

23 (2) deny the application on the grounds that  
24 the applicant failed to qualify for a concealed handgun  
25 license pursuant to the provisions of the License to Carry

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1 Act.

2 B. If the county sheriff denies an application, he  
3 shall notify the applicant in writing, stating the grounds for  
4 denial of the application and informing the applicant of his  
5 right to submit, within sixty days, any additional  
6 documentation relating to the grounds for denial. Upon  
7 receiving any additional documentation from an applicant, the  
8 county sheriff shall reconsider his decision and inform the  
9 applicant within twenty days of the result of the  
10 reconsideration. The applicant shall also be informed of his  
11 right to seek review of the denial by the county sheriff in  
12 the district court of the county in which the applicant  
13 resides. If the district court reverses the county sheriff's  
14 denial of an applicant's application for a concealed handgun  
15 license, any costs incurred by the applicant in bringing the  
16 appeal shall be reimbursed to the applicant by the county.

17 C. The county sheriff shall maintain a database of  
18 all licensees, and information contained in the database shall  
19 be available to all state and local law enforcement agencies  
20 upon request. Information relating to an applicant or to a  
21 licensee received and maintained by the county sheriff or any  
22 other law enforcement agency is privileged and confidential  
23 and exempt from public disclosure.

24 D. A concealed handgun license issued by the  
25 county sheriff shall include the following:

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- 1 (1) a color photograph of the licensee;  
2 (2) the licensee's name, address and date of  
3 birth; and  
4 (3) the expiration date of the concealed  
5 handgun license.

6 E. A licensee shall notify the county sheriff  
7 within thirty days regarding a change of his name or permanent  
8 address. A licensee shall notify the county sheriff within  
9 thirty days if the licensee loses his concealed handgun  
10 license or it is stolen or destroyed.

11 F. If a concealed handgun license is reported  
12 lost, stolen or destroyed, the license is invalid and the  
13 licensee may obtain a duplicate license by furnishing the  
14 county sheriff a notarized statement that the original license  
15 was lost, stolen or destroyed and paying a fee of fifteen  
16 dollars (\$15.00) to the county treasurer.

17 G. A licensee may renew his concealed handgun  
18 license within sixty days of the expiration date of the  
19 license by returning a completed renewal form designed by the  
20 department of public safety to the county sheriff, accompanied  
21 by a payment of a fifty-dollar (\$50.00) renewal fee. A  
22 licensee who fails to renew his concealed handgun license  
23 before it expires may renew his license by taking a refresher  
24 firearms training course and paying, in addition to the fifty-  
25 dollar (\$50.00) renewal fee, a late fee of fifteen dollars

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1 (\$15.00) to the county treasurer. A concealed handgun license  
2 shall not be renewed more than sixty days after it has  
3 expired. A licensee who fails to renew his concealed handgun  
4 license within sixty days after it has expired may apply for a  
5 new concealed handgun license pursuant to the provisions of  
6 the License to Carry Act.

7 H. The county sheriff may suspend or revoke a  
8 concealed handgun license if:

9 (1) the licensee provided the county sheriff  
10 with false information on his application for a concealed  
11 handgun license;

12 (2) the licensee did not satisfy the criteria  
13 for issuance of a concealed handgun license at the time the  
14 license was issued to him; or

15 (3) subsequent to receiving a concealed  
16 handgun license, the licensee violates a provision of Section  
17 5 of the License to Carry Act.

18 Section 8. [NEW MATERIAL] DEMONSTRATION OF ABILITY AND  
19 KNOWLEDGE-- COURSE REQUIREMENT-- PROPRIETARY INTEREST--  
20 EXEMPTIONS. --

21 A. The department of public safety shall prepare  
22 and publish minimum standards for approved firearms training  
23 courses that teach proficiency with handguns. An approved  
24 firearms training course shall be a course that is certified  
25 or sponsored by a federal or state law enforcement agency, a

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1 college, a firearms training school or a nationally recognized  
2 organization approved by the department of public safety that  
3 customarily offers firearms training. The firearms training  
4 course shall provide instruction regarding:

5 (1) knowledge of and safe handling of single  
6 and double action revolvers and semi-automatic handguns;

7 (2) safe storage of handguns and child  
8 safety;

9 (3) safe handgun shooting fundamentals;

10 (4) live shooting of a handgun on a firing  
11 range;

12 (5) identification of ways to develop and  
13 maintain handgun shooting skills;

14 (6) federal, state and local laws pertaining  
15 to the purchase, ownership, transportation, use and possession  
16 of handguns;

17 (7) techniques for avoiding a criminal attack  
18 and how to control a violent confrontation; and

19 (8) techniques for nonviolent dispute  
20 resolution.

21 C. Every instructor of an approved firearms  
22 training course shall annually file a copy of the course  
23 description and proof of certification with the department of  
24 public safety. A person's proprietary interest in a firearms  
25 training course shall not be disclosed to any other person

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1 except a law enforcement officer.

2 D. The application requirement set forth in  
3 Paragraph (10) of Subsection A of Section 5 of the License to  
4 Carry Act shall be waived for an applicant who is currently:

5 (1) certified to teach a firearms training  
6 course approved by the department of public safety;

7 (2) serving on active duty or active reserve  
8 duty as a law enforcement officer in New Mexico for a period  
9 of not less than five consecutive years prior to application  
10 for a concealed handgun license; or

11 (3) retired from active duty with a federal  
12 or New Mexico state, county or municipal law enforcement  
13 agency, when the period of retirement does not exceed two  
14 years prior to application for a concealed handgun license.

15 Section 9. [NEW MATERIAL] LIMITATION ON LICENSE. --

16 Nothing in the License to Carry Act shall be construed as  
17 allowing a licensee in possession of a valid concealed handgun  
18 license to carry a concealed handgun into or on premises where  
19 to do so would be in violation of state or federal law.

20 Section 10. [NEW MATERIAL] POSSESSION OF LICENSE. --A

21 licensee shall have his concealed handgun license in his  
22 possession at all times while carrying a concealed handgun.

23 Section 11. [NEW MATERIAL] PREEMPTION OF LICENSE BY  
24 TRIBAL LAW. --A concealed handgun license shall be valid on  
25 tribal land unless the governing body of an Indian nation,

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1 tribe or pueblo has preempted the License to Carry Act by  
2 enacting law prohibiting the carrying of a concealed handgun  
3 on tribal land.

4 Section 12. [NEW MATERIAL] RULES-- COUNTY SHERIFFS TO  
5 ADMINISTER.--A county sheriff shall promulgate rules necessary  
6 to implement the provisions of the License to Carry Act. The  
7 rules shall include:

8 A. grounds for the suspension and revocation of  
9 concealed handgun licenses issued pursuant to the provisions  
10 of the License to Carry Act;

11 B. provision of authority for a sheriff, his  
12 deputy or other law enforcement officer to confiscate a  
13 concealed handgun license when a licensee violates the  
14 provisions of the License to Carry Act;

15 C. provision of authority for a private property  
16 owner to disallow the carrying of a concealed handgun on his  
17 property;

18 D. provision of authority for private employers to  
19 disallow the carrying of a concealed handgun by an employee  
20 during the employee's work shift;

21 E. provision of authority for the transfer of a  
22 concealed handgun license issued by another state; and

23 F. creation of a sequential numbering system for  
24 all concealed handgun licenses issued by the county sheriff  
25 and display of numbers on issued concealed handgun licenses.

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1           Section 13.   [NEW MATERIAL] FUND CREATED. --

2           A.   A "license to carry fund" shall be created in  
3 each county treasury.

4           B.   All money received by the county treasurer  
5 pursuant to the provisions of the License to Carry Act shall  
6 be deposited by the county treasurer for credit to the  
7 county's license to carry fund.  The county treasurer shall  
8 invest the fund as all other county funds are invested, and  
9 income from the investment of the fund shall be credited to  
10 the fund.  Balances remaining at the end of any fiscal year  
11 shall remain in the fund.

12          C.   Money in a county license to carry fund shall  
13 be appropriated to the county sheriff to carry out the  
14 provisions of the License to Carry Act.

15           Section 14.   [NEW MATERIAL] RECIPROCITY. --The department  
16 of public safety may negotiate with other states to establish  
17 reciprocity for licenses issued by county sheriffs to carry  
18 concealed handguns if the provisions in other state's laws are  
19 substantially similar to provisions of the License to Carry  
20 Act.

21           Section 15.   Section 30-7-2 NMSA 1978 (being Laws 1963,  
22 Chapter 303, Section 7-2, as amended) is amended to read:

23           "30-7-2.   UNLAWFUL CARRYING OF A DEADLY WEAPON. --

24           A.   Unlawful carrying of a deadly weapon consists  
25 of carrying a concealed loaded firearm or any other type of

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1 deadly weapon anywhere, except in the following cases:

2 (1) in the person's residence or on real  
3 property belonging to him as owner, lessee, tenant or  
4 licensee;

5 (2) in a private automobile or other private  
6 means of conveyance, for lawful protection of the person's or  
7 another's person or property;

8 (3) by a peace officer in accordance with the  
9 policies of his law enforcement agency who is certified  
10 pursuant to the Law Enforcement Training Act; ~~[or]~~

11 (4) by a peace officer in accordance with the  
12 policies of his law enforcement agency who is employed on a  
13 temporary basis by that agency and who has successfully  
14 completed a course of firearms instruction prescribed by the  
15 New Mexico law enforcement academy or provided by a certified  
16 firearms instructor who is employed on a permanent basis by a  
17 law enforcement agency; or

18 (5) by a person in possession of a valid  
19 concealed handgun license issued to him by the county sheriff  
20 pursuant to the provisions of the License to Carry Act.

21 B. Nothing in this section shall be construed to  
22 prevent the carrying of any unloaded firearm.

23 C. Whoever commits unlawful carrying of a deadly  
24 weapon is guilty of a petty misdemeanor. "

25 Section 16. EFFECTIVE DATE. -- The effective date of the

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1 provisions of this act is July 1, 2001.

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