

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0310.01 Richard Sweetman x4333

SENATE BILL 14-094

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A BILL FOR AN ACT

101 **CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT**
102 **TO TRANSFERS OF FIREARMS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill repeals the requirement that before any person who is not a licensed gun dealer transfers possession of a firearm to a transferee, he or she shall require that a criminal background check be conducted of the prospective transferee and obtain approval of the transfer from the Colorado bureau of investigation (CBI).

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

The bill repeals the requirement that CBI impose a fee for performing an instant criminal background check pursuant to the transfer of a firearm.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal** 18-12-112 as
3 follows:

4 **18-12-112. Private firearms transfers - background check**
5 **required - penalty - definitions.** ~~(1) (a) On and after July 1, 2013,~~
6 ~~except as described in subsection (6) of this section, before any person~~
7 ~~who is not a licensed gun dealer, as defined in section 12-26.1-106 (6);~~
8 ~~C.R.S., transfers or attempts to transfer possession of a firearm to a~~
9 ~~transferee, he or she shall:~~

10 ~~(I) Require that a background check, in accordance with section~~
11 ~~24-33.5-424, C.R.S., be conducted of the prospective transferee; and~~

12 ~~(H) Obtain approval of a transfer from the bureau after a~~
13 ~~background check has been requested by a licensed gun dealer, in~~
14 ~~accordance with section 24-33.5-424, C.R.S.~~

15 ~~(b) As used in this section, unless the context requires otherwise,~~
16 ~~"transferee" means a person who desires to receive or acquire a firearm~~
17 ~~from a transferor. If a transferee is not a natural person, then each natural~~
18 ~~person who is authorized by the transferee to possess the firearm after the~~
19 ~~transfer shall undergo a background check, as described in paragraph (a)~~
20 ~~of this subsection (1), before taking possession of the firearm.~~

21 ~~(2) (a) A prospective firearm transferor who is not a licensed gun~~
22 ~~dealer shall arrange for a licensed gun dealer to obtain the background~~
23 ~~check required by this section.~~

24 ~~(b) A licensed gun dealer who obtains a background check on a~~

1 ~~prospective transferee shall record the transfer, as provided in section~~
2 ~~12-26-102, C.R.S., and retain the records, as provided in section~~
3 ~~12-26-103, C.R.S., in the same manner as when conducting a sale, rental,~~
4 ~~or exchange at retail. The licensed gun dealer shall comply with all state~~
5 ~~and federal laws, including 18 U.S.C. sec. 922, as if he or she were~~
6 ~~transferring the firearm from his or her inventory to the prospective~~
7 ~~transferee.~~

8 (c) ~~A licensed gun dealer who obtains a background check for a~~
9 ~~prospective firearm transferor pursuant to this section shall provide the~~
10 ~~firearm transferor and transferee a copy of the results of the background~~
11 ~~check, including the bureau's approval or disapproval of the transfer.~~

12 (d) ~~A licensed gun dealer may charge a fee for services rendered~~
13 ~~pursuant to this section, which fee shall not exceed ten dollars.~~

14 (3) (a) ~~A prospective firearm transferee under this section shall~~
15 ~~not accept possession of the firearm unless the prospective firearm~~
16 ~~transferor has obtained approval of the transfer from the bureau after a~~
17 ~~background check has been requested by a licensed gun dealer, as~~
18 ~~described in paragraph (b) of subsection (1) of this section.~~

19 (b) ~~A prospective firearm transferee shall not knowingly provide~~
20 ~~false information to a prospective firearm transferor or to a licensed gun~~
21 ~~dealer for the purpose of acquiring a firearm.~~

22 (4) ~~If the bureau approves a transfer of a firearm pursuant to this~~
23 ~~section, the approval shall be valid for thirty calendar days, during which~~
24 ~~time the transferor and transferee may complete the transfer.~~

25 (5) ~~A person who transfers a firearm in violation of the provisions~~
26 ~~of this section may be jointly and severally liable for any civil damages~~
27 ~~proximately caused by the transferee's subsequent use of the firearm.~~

- 1 ~~(6) The provisions of this section do not apply to:~~
- 2 ~~(a) A transfer of an antique firearm, as defined in 18 U.S.C. sec.~~
3 ~~921(a)(16), as amended, or a curio or relic, as defined in 27 CFR 478.11,~~
4 ~~as amended;~~
- 5 ~~(b) A transfer that is a bona fide gift or loan between immediate~~
6 ~~family members, which are limited to spouses, parents, children, siblings,~~
7 ~~grandparents, grandchildren, nieces, nephews, first cousins, aunts, and~~
8 ~~uncles;~~
- 9 ~~(c) A transfer that occurs by operation of law or because of the~~
10 ~~death of a person for whom the prospective transferor is an executor or~~
11 ~~administrator of an estate or a trustee of a trust created in a will;~~
- 12 ~~(d) A transfer that is temporary and occurs while in the home of~~
13 ~~the unlicensed transferee if:~~
- 14 ~~(I) The unlicensed transferee is not prohibited from possessing~~
15 ~~firearms; and~~
- 16 ~~(II) The unlicensed transferee reasonably believes that possession~~
17 ~~of the firearm is necessary to prevent imminent death or serious bodily~~
18 ~~injury to the unlicensed transferee;~~
- 19 ~~(e) A temporary transfer of possession without transfer of~~
20 ~~ownership or a title to ownership, which transfer takes place:~~
- 21 ~~(I) At a shooting range located in or on premises owned or~~
22 ~~occupied by a duly incorporated organization organized for conservation~~
23 ~~purposes or to foster proficiency in firearms;~~
- 24 ~~(II) At a target firearm shooting competition under the auspices~~
25 ~~of, or approved by, a state agency or a nonprofit organization; or~~
- 26 ~~(III) While hunting, fishing, target shooting, or trapping if:~~
- 27 ~~(A) The hunting, fishing, target shooting, or trapping is legal in all~~

1 places where the unlicensed transferee possesses the firearm; and

2 (B) ~~The unlicensed transferee holds any license or permit that is~~

3 ~~required for such hunting, fishing, target shooting, or trapping;~~

4 (f) ~~A transfer of a firearm that is made to facilitate the repair or~~

5 ~~maintenance of the firearm; except that this paragraph (f) does not apply~~

6 ~~unless all parties who possess the firearm as a result of the transfer may~~

7 ~~legally possess a firearm;~~

8 (g) ~~Any temporary transfer that occurs while in the continuous~~

9 ~~presence of the owner of the firearm;~~

10 (h) ~~A temporary transfer for not more than seventy-two hours. A~~

11 ~~person who transfers a firearm pursuant to this paragraph (h) may be~~

12 ~~jointly and severally liable for damages proximately caused by the~~

13 ~~transferee's subsequent unlawful use of the firearm; or~~

14 (i) ~~A transfer of a firearm from a person serving in the armed~~

15 ~~forces of the United States who will be deployed outside of the United~~

16 ~~States within the next thirty days to any immediate family member, which~~

17 ~~is limited to a spouse, parent, child, sibling, grandparent, grandchild,~~

18 ~~niece, nephew, first cousin, aunt, and uncle of the person.~~

19 (7) ~~For purposes of paragraph (f) of subsection (6) of this section:~~

20 (a) ~~An owner, manager, or employee of a business that repairs or~~

21 ~~maintains firearms may rely upon a transferor's statement that he or she~~

22 ~~may legally possess a firearm unless the owner, manager, or employee has~~

23 ~~actual knowledge to the contrary and may return possession of the firearm~~

24 ~~to the transferor upon completion of the repairs or maintenance without~~

25 ~~a background check;~~

26 (b) ~~Unless a transferor of a firearm has actual knowledge to the~~

27 ~~contrary, the transferor may rely upon the statement of an owner,~~

1 manager, or employee of a business that repairs or maintains firearms that
2 no owner, manager, or employee of the business is prohibited from
3 possessing a firearm.

4 (8) ~~Nothing in subsection (6) of this section shall be interpreted~~
5 ~~to limit or otherwise alter the applicability of section 18-12-111~~
6 ~~concerning the unlawful purchase or transfer of firearms.~~

7 (9) (a) A person who violates a provision of this section commits
8 a class 1 misdemeanor and shall be punished in accordance with section
9 18-1.3-501. The person shall also be prohibited from possessing a firearm
10 for two years, beginning on the date of his or her conviction.

11 (b) ~~When a person is convicted of violating a provision of this~~
12 ~~section, the state court administrator shall report the conviction to the~~
13 ~~bureau and to the national instant criminal background check system~~
14 ~~created by the federal "Brady Handgun Violence Prevention Act", Pub.L.~~
15 ~~103-159, the relevant portion of which is codified at 18 U.S.C. sec. 922~~
16 ~~(t). The report shall include information indicating that the person is~~
17 ~~prohibited from possessing a firearm for two years, beginning on the date~~
18 ~~of his or her conviction.~~

19 **SECTION 2.** In Colorado Revised Statutes, 24-33.5-424, **repeal**
20 (3.5) as follows:

21 **24-33.5-424. National instant criminal background check**
22 **system - state point of contact - grounds for denial of firearm transfer**
23 **- appeal - rule-making - unlawful acts - instant criminal background**
24 **check cash fund - creation - repeal.** (3.5) (a) ~~On and after March 20,~~
25 ~~2013, the bureau shall impose a fee for performing an instant criminal~~
26 ~~background check pursuant to this section. The amount of the fee shall~~
27 ~~not exceed the total amount of direct and indirect costs incurred by the~~

1 bureau in performing the background check.

2 (b) The bureau shall transmit all moneys collected pursuant to this
3 subsection (3.5) to the state treasurer, who shall credit the same to the
4 instant criminal background check cash fund, which fund is hereby
5 created and referred to in this subsection (3.5) as the "fund".

6 (c) The moneys in the fund shall be subject to annual
7 appropriation by the general assembly for the direct costs associated with
8 performing background checks pursuant to this section. The state
9 treasurer may invest any moneys in the fund not expended for the purpose
10 of this section as provided by law. The state treasurer shall credit any
11 interest and income derived from the deposit and investment of moneys
12 in the fund to the fund.

13 (d) Any unexpended and unencumbered moneys remaining in the
14 fund at the end of a fiscal year shall remain in the fund and shall not be
15 credited to any other fund. To the extent practicable, the bureau shall use
16 any such remaining funds to reduce the amount of the fee described in
17 paragraph (a) of this subsection (3.5).

18 (e) The bureau is authorized to contract with a public or private
19 entity for services related to the collection of the fee described in
20 paragraph (a) of this subsection (3.5).

21 (f) On January 15, 2014, and on January 15 of each calendar year
22 thereafter, the bureau shall report to the joint budget committee
23 concerning:

24 (I) The number of full-time employees used by the bureau in the
25 preceding year for the purpose of performing background checks pursuant
26 to this section; and

27 (II) The calculations used by the bureau to determine the amount

1 of the fee imposed pursuant to this subsection (3.5).

2 (g) (I) ~~The bureau is authorized to continue using general fund~~
3 ~~moneys appropriated to the bureau for the 2013-14 fiscal year for the~~
4 ~~purpose of performing criminal background checks pursuant to this~~
5 ~~section until the sooner of:~~

6 (A) ~~A date six months after March 20, 2013; or~~

7 (B) ~~A date upon which sufficient moneys exist within the fund to~~
8 ~~pay for the performing of criminal background checks pursuant to this~~
9 ~~section.~~

10 (H) ~~This paragraph (g) is repealed, effective July 1, 2014.~~

11 **SECTION 3. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.