

Senate Bill No. 143—Senators Atkinson, Cancela, Cannizzaro, Woodhouse, Parks; Brooks, Denis, Dondero Loop, Harris, Ohrenschall, Ratti, Scheible and Spearman

Joint Sponsors: Assemblymen Frierson, Yeager, Bilbray-Axelrod; Assefa, Backus, Cohen, Duran, Flores, Fumo, Gorelow, Jauregui, Martinez, McCurdy, Miller, Monroe-Moreno, Nguyen, Peters, Spiegel, Sprinkle, Swank, Thompson, Torres and Watts

CHAPTER.....

AN ACT relating to firearms; repealing, revising and reenacting provisions relating to background checks for certain sales or transfers of firearms; prohibiting a fee from being charged for certain background checks; requiring a licensed dealer of firearms to conduct a background check before a private party sale or transfer in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law concerning background checks for the sale or transfer of firearms is contained in The Background Check Act, which was proposed by an initiative petition and approved by the voters at the 2016 General Election. (NRS 202.2531-202.2543) Pursuant to the Nevada Constitution, as an initiative petition approved by the voters, The Background Check Act is not subject to legislative amendment or repeal until after November 22, 2019. (Nev. Const. Art. 19, § 2) To date, The Background Check Act has not been implemented because the Attorney General issued an opinion that a licensed firearms dealer cannot contact the National Instant Criminal Background Check System directly as the Act requires before the sale or transfer of a firearm that is being sold or transferred by a private party. (Att'y Gen. Op. 2016-12 (Dec. 28, 2016)) Therefore, **section 9** of this bill repeals all of the provisions of The Background Check Act and reenacts the provisions without the requirement to make that direct contact. **Section 10** of this bill makes the provisions effective January 2, 2020, which is after the date on which The Background Check Act may be amended or repealed.

Section 2 of this bill establishes a short title in statute to allow the provisions to be cited as The Background Check Act. (See NRS 202.2531) **Section 3** of this bill sets forth the findings and declarations regarding The Background Check Act. (See NRS 202.2533) **Section 4** of this bill provides definitions for certain terms used in The Background Check Act. (See NRS 202.2535) **Section 5** of this bill requires a licensed firearms dealer to conduct a background check on a person who wishes to buy or receive a firearm from an unlicensed person, but removes the requirement that the licensed dealer contact the National Instant Criminal Background Check System to perform the background check. Instead, **section 5** requires a licensed dealer to contact the same agency the dealer would otherwise contact to conduct a background check if the dealer were selling or transferring the firearm from his or her own inventory. (See NRS 202.254)

Section 6 of this bill provides certain exemptions from the requirement to conduct a background check when a private person is selling or transferring a firearm. (See NRS 202.2541) **Section 7** of this bill sets forth the penalties for



selling or transferring a firearm in violation of The Background Check Act. (See NRS 202.2543) **Section 8** of this bill prohibits the Central Repository for Nevada Records of Criminal History from charging to perform a background check on a person who wishes to purchase or receive a firearm from an unlicensed person.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *Sections 2 to 7, inclusive, of this act may be cited as The Background Check Act.*

Sec. 3. *The Legislature representing the People of the State of Nevada hereby finds and declares that:*

1. To promote public safety, federal law currently prohibits felons, domestic abusers, the severely mentally ill and other dangerous people from buying or possessing firearms;

2. Federally licensed firearms dealers are required to run background checks on their prospective buyers to ensure they are not prohibited from buying or possessing firearms;

3. Criminals and other dangerous people can avoid background checks by buying guns from unlicensed firearms sellers, whom they can easily meet online or at gun shows and who are not legally required to run background checks before selling or transferring firearms;

4. Due to this loophole, millions of guns exchange hands each year in the United States without a background check;

5. Most Nevadans live within 10 miles of a licensed gun dealer;

6. We have the right to bear arms, but with rights come responsibilities, including the responsibility to keep guns out of the hands of convicted felons and domestic abusers; and

7. To promote public safety and protect our communities, and to create a fair, level playing field for all gun sellers, the people of the State of Nevada approved The Background Check Initiative in the 2016 General Election with the intent to more effectively enforce current law prohibiting dangerous persons from purchasing and possessing firearms by requiring background checks on all firearms sales and transfers, with reasonable exceptions, including for immediate family members, hunting and self-defense.



Sec. 4. *As used in sections 2 to 7, inclusive, of this act unless the context otherwise requires:*

1. *“Central Repository” has the meaning ascribed to it in NRS 179A.045.*

2. *“Hunting” has the meaning ascribed to it in NRS 501.050.*

3. *“Licensed dealer” means a person who holds a license as a dealer in firearms issued pursuant to 18 U.S.C. § 923(a).*

4. *“Transferee” means an unlicensed person who wishes or intends to receive a firearm from another unlicensed person.*

5. *“Transferor” means an unlicensed person who wishes or intends to transfer a firearm to another unlicensed person.*

6. *“Trapping” has the meaning ascribed to it in NRS 501.090.*

7. *“Unlicensed person” means a person who does not hold a license as a dealer, importer or manufacturer in firearms issued pursuant to 18 U.S.C. § 923(a).*

Sec. 5. 1. *Except as otherwise provided in section 6 of this act, an unlicensed person shall not sell or transfer a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee in compliance with this section.*

2. *The seller or transferor and buyer or transferee shall appear jointly with the firearm and request that a licensed dealer conduct a background check on the buyer or transferee.*

3. *A licensed dealer who agrees to conduct a background check pursuant to this section shall comply with all requirements of federal and state law as though the licensed dealer were selling or transferring the firearm from his or her own inventory to the buyer or transferee, including, but not limited to, all recordkeeping requirements. For the purpose of determining whether the buyer or transferee is eligible to purchase and possess firearms under state and federal law, the licensed dealer shall contact the same agency as though the licensed dealer were selling or transferring the firearm from his or her own inventory to the buyer or transferee.*

4. *Upon receiving a request for a background check from a licensed dealer pursuant to this section, the Central Repository or any other state or local agency described in subsection 3 shall, in the same manner as it would for the sale of a firearm from the licensed dealer’s inventory, perform a background check on the buyer or transferee and notify the licensed dealer of the results of the background check.*



5. The seller or transferor may remove the firearm from the business premises while the background check is being conducted if, before the seller or transferor sells or transfers the firearm to the buyer or transferee, the seller or transferor and the buyer or transferee return to the licensed dealer who takes possession of the firearm to complete the sale or transfer.

6. A licensed dealer who agrees to conduct a background check pursuant to this section shall inform the seller or transferor and the buyer or transferee of the response from the agency described in subsection 3. If the response indicates that the buyer or transferee is ineligible to purchase or possess the firearm, the licensed dealer shall return the firearm to the seller or transferor and the seller or transferor shall not sell or transfer the firearm to the buyer or transferee.

7. A licensed dealer may charge a reasonable fee for conducting a background check and facilitating a firearm transfer between unlicensed persons pursuant to this section.

Sec. 6. The provisions of section 5 of this act do not apply to:

1. The sale or transfer of a firearm by or to any law enforcement agency and, to the extent he or she is acting within the course and scope of his or her employment and official duties, any peace officer, security guard entitled to carry a firearm under NAC 648.345, member of the armed forces or federal official.

2. The sale or transfer of an antique firearm, as defined in 18 U.S.C. § 921 (a)(16).

3. The sale or transfer of a firearm between immediate family members, which for the purposes of this section means spouses and domestic partners and any of the following relations, whether by whole or half blood, adoption, or step-relation: parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews.

4. The transfer of a firearm to an executor, administrator, trustee or personal representative of an estate or a trust that occurs by operation of law upon the death of the former owner of the firearm.

5. A temporary transfer of a firearm to a person who is not prohibited from buying or possessing firearms under state or federal law if such transfer:

(a) Is necessary to prevent imminent death or great bodily harm; and

(b) Lasts only as long as immediately necessary to prevent such imminent death or great bodily harm.

6. A temporary transfer of a firearm if:



(a) *The transferor has no reason to believe that the transferee is prohibited from buying or possessing firearms under state or federal law;*

(b) *The transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime; and*

(c) *Such transfer occurs and the transferee's possession of the firearm following the transfer is exclusively:*

(1) *At an established shooting range authorized by the governing body of the jurisdiction in which such range is located;*

(2) *At a lawful organized competition involving the use of a firearm;*

(3) *While participating in or practicing for a performance by an organized group that uses firearms as a part of the public performance;*

(4) *While hunting or trapping if the hunting or trapping is legal in all places where the transferee possesses the firearm and the transferee holds all licenses or permits required for such hunting or trapping; or*

(5) *While in the presence of the transferor.*

Sec. 7. *An unlicensed person who sells or voluntarily transfers one or more firearms to another unlicensed person in violation of section 5 of this act:*

1. *For a first offense involving the sale or transfer of one or more firearms, is guilty of a gross misdemeanor; and*

2. *For a second or subsequent offense involving the sale or transfer of one or more firearms, is guilty of a category C felony and shall be punished as provided in NRS 193.130.*

Sec. 8. NRS 179A.140 is hereby amended to read as follows:

179A.140 1. Except as otherwise provided in this section, an agency of criminal justice may charge a reasonable fee for information relating to records of criminal history provided to any person or governmental entity.

2. An agency of criminal justice shall not charge a fee for providing such information to another agency of criminal justice if the information is provided for purposes of the administration of criminal justice, or for providing such information to the State Disaster Identification Team of the Division of Emergency Management of the Department.

3. The Central Repository shall not charge such a fee:

(a) For information relating to a person regarding whom the Central Repository provided a similar report within the immediately



preceding 90 days in conjunction with the application by that person for professional licensure; ~~for~~

(b) For information provided to any organization that meets the criteria established by regulation pursuant to paragraph (b) of subsection 5 of NRS 179A.310 ~~for~~; or

(c) For information provided to a person who is required to conduct a background check pursuant to section 5 of this act.

4. The Director may request an allocation from the Contingency Account pursuant to NRS 353.266, 353.268 and 353.269 to cover the costs incurred by the Department to carry out the provisions of paragraph (b) of subsection 3.

5. All money received or collected by the Department pursuant to this section must be used to defray the cost of operating the Central Repository.

Sec. 9. NRS 202.2531, 202.2533, 202.2535, 202.254, 202.2541 and 202.2543 are hereby repealed.

Sec. 10. This act becomes effective on January 2, 2020.



