

2 State of Arkansas
3 94th General Assembly
4 Regular Session, 2023

A Bill

HOUSE BILL 1761

5
6 By: Representative D. Garner
7 By: Senator G. Leding

8 Filed with: House Committee on Judiciary
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO ESTABLISH UNIVERSAL BACKGROUND CHECKS FOR
12 THE PURPOSES OF PURCHASING, RECEIVING, OR
13 TRANSFERRING A FIREARM; AND FOR OTHER PURPOSES.
14

Subtitle

15
16
17 TO ESTABLISH UNIVERSAL BACKGROUND CHECKS
18 FOR THE PURPOSES OF PURCHASING,
19 RECEIVING, OR TRANSFERRING A FIREARM.
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 5, Chapter 73, is amended to add an
25 additional subchapter to read as follows:
26

Subchapter 5 – Background Check for Firearm Transfer

5-73-501. Legislative findings.

The General Assembly finds that:

27
28
29
30 (1) To promote public safety, federal law currently prohibits
31 felons, domestic abusers, people who have been adjudicated mentally ill, and
32 other dangerous people from buying or possessing a firearm;

33 (2) Federally licensed firearms dealers are required to conduct
34 a background check on a prospective buyer to ensure the person is not
35 prohibited from buying or possessing a firearm;

1 (3) Criminals and other dangerous people can avoid background
2 checks by buying firearms from unlicensed firearms sellers, whom they can
3 easily meet online or at a gun show and who are not legally required to
4 conduct a background check before selling or transferring the firearm;

5 (4) Due to this loophole, millions of firearms change hands each
6 year in the United States without a background check;

7 (5) Arkansans have the right to bear arms under the United
8 States Constitution and the Arkansas Constitution, but with this right comes
9 responsibilities, including the responsibility of firearm owners to ensure
10 that the firearms they purchase do not eventually come into the possession of
11 convicted felons and domestic abusers; and

12 (6) To promote public safety and protect communities, and to
13 promote equitable opportunities for all lawful firearm sellers, the General
14 Assembly believes that to more effectively enforce current law that prohibits
15 felons and people who have been adjudicated mentally ill from purchasing and
16 possessing firearms, a background check should be required on all firearms
17 sales and transfers, with reasonable exceptions such as for transfers to
18 immediate family members, for hunting purposes, and for self-defense
19 purposes.

20
21 5-73-502. Definitions.

22 As used in this subchapter:

23 (1) "Hunting" means to search for, pursue, or attract wildlife
24 for the purpose and with the means of capturing, injuring, or killing that
25 wildlife, every attempt to capture, injure, or kill wildlife, and every act
26 of assistance to any other person in capturing, injuring, or killing that
27 wildlife;

28 (2) "Immediate family member" means a spouse, a parent, a child,
29 a sibling, a grandparent, a grandchild, an aunt, an uncle, a niece, and a
30 nephew;

31 (3) "Licensed dealer" means a person who holds a license as a
32 dealer in firearms issued under 18 U.S.C. § 923(a), as it existed on January
33 1, 2023;

34 (4) "Transferee" means an unlicensed person who wishes or
35 intends to receive a firearm from another unlicensed person;

1 (5) "Transferor" means an unlicensed person who wishes or
2 intends to transfer a firearm to another unlicensed person; and

3 (6) "Unlicensed person" means a person who does not hold a
4 license as a dealer, importer, or manufacturer in firearms issued under 18
5 U.S.C. § 923(a), as it existed on January 1, 2023.

6
7 5-73-503. Lawful transfer of firearm – Background check required.

8 (a) Except as otherwise provided by law, an unlicensed person shall
9 not sell or transfer a firearm to another unlicensed person unless a licensed
10 dealer first conducts a background check on the buyer or transferee.

11 (b) The seller or transferor and buyer or transferee shall appear
12 jointly with the firearm and request that a licensed dealer conduct a
13 background check on the buyer or transferee.

14 (c)(1) A licensed dealer who agrees to conduct a background check
15 under this section shall comply with all requirements of federal and state
16 law as though the licensed dealer were selling or transferring the firearm
17 from his or her own inventory to the buyer or transferee, including without
18 limitation compliance with all recordkeeping requirements provided by law or
19 by rule.

20 (2) For the purpose of determining whether the buyer or
21 transferee is eligible to purchase and possess a firearm under state and
22 federal law, the licensed dealer shall contact the Arkansas Crime Information
23 Center as though the licensed dealer were selling or transferring the firearm
24 from his or her own inventory to the buyer or transferee.

25 (d) Upon receiving a request for a background check from a licensed
26 dealer under this section, the Arkansas Crime Information Center or other
27 state or local agency under this section shall, in the same manner as it
28 would for the sale or transfer of a firearm from the licensed dealer's
29 inventory, perform a background check on the buyer or transferee and notify
30 the licensed dealer of the results of the background check.

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

1 (f)(1) A licensed dealer who agrees to conduct a background check
2 under this section shall inform the seller or transferor and the buyer or
3 transferee of the response from the center.

4 (2) If the response from the center indicates that the buyer or
5 transferee is ineligible to purchase or possess the firearm, the licensed
6 dealer shall return the firearm to the seller or transferor and the seller or
7 transferor shall not sell or transfer the firearm to the buyer or transferee.

8 (g) A licensed dealer may charge a reasonable fee for conducting a
9 background check and facilitating a firearm transfer between unlicensed
10 persons under this section.

11
12 5-73-504. Exceptions.

13 The background check requirement under § 5-73-503 does not apply to:

14 (1) The transfer of a firearm by or to any law enforcement
15 agency and, to the extent he or she is acting within the course and scope of
16 his or her employment and official duties, any law enforcement officer,
17 commissioned security guard who may carry a firearm, member of the United
18 States Armed Forces, or federal official;

19 (2) The transfer of an antique firearm, as defined in 18 U.S.C.
20 § 921 (a)(16), as it existed on January 1, 2023;

21 (3) The transfer of a firearm between immediate family members;

22 (4) The transfer of a firearm to an executor, administrator,
23 trustee, or personal representative of an estate or a trust that occurs by
24 operation of law upon the death of the former owner of the firearm;

25 (5) A temporary transfer of a firearm to a person who is not
26 prohibited from buying or possessing firearms under state or federal law if
27 the temporary transfer:

28 (A) Is necessary to prevent imminent death or serious
29 physical injury; and

30 (B) Lasts only as long as immediately necessary to prevent
31 imminent death or serious physical injury;

32 (6) A temporary transfer of a firearm if:

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

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

4 (C) The transfer occurs and the transferee's possession of
5 the firearm following the transfer is exclusively:

6 (i) At an established shooting range authorized by
7 the governing body of the jurisdiction in which the established shooting
8 range is located;

9 (ii) At a lawful organized competition involving the
10 use of a firearm;

11 (iii) While participating in or practicing for a
12 public performance by an organized group that uses firearms as a part of the
13 public performance;

14 (iv) While hunting or trapping if the hunting or
15 trapping is legal in all places where the transferee possesses the firearm
16 and the transferee holds all licenses or permits required for the hunting or
17 trapping; or

18 (v) While in the presence of the transferor.

19
20 5-73-505. Criminal penalties.

21 A person who knowingly transfers a firearm in violation of this
22 subchapter upon conviction is guilty of a:

23 (1) Class A misdemeanor for a first offense; or

24 (2) Class D felony for a second or subsequent offense.

25
26 5-73-506. Fees.

27 (a) The Arkansas Crime Information Center or other criminal justice
28 agency conducting a background check under this subchapter may charge a
29 reasonable fee for information relating to records of criminal history
30 provided to another person or governmental entity.

31 (b) The center or other criminal justice agency shall not charge a fee
32 for providing information to another criminal justice agency if the
33 information is provided for purposes of the administration of criminal
34 justice, or for providing information to a local or state agency for the
35 purposes of emergency response.

36 (c) The center shall not charge a fee under this subchapter:

1 (1) For information relating to a person regarding whom the
2 center provided a similar report within the immediately preceding ninety (90)
3 days in conjunction with the application by that person for professional
4 licensure; or

5 (2) For information provided to a person who is required to
6 conduct a background check under this subchapter.

7
8
9 Referred requested by the Arkansas House of Representatives

10 Prepared by: JLC/SJA

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36