

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1761

By: Representative D. Garner

By: Senator G. Leding

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH UNIVERSAL BACKGROUND CHECKS
FOR THE PURPOSES OF PURCHASING,
RECEIVING, OR TRANSFERRING A FIREARM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

Subchapter 5 – Background Check for Firearm Transfer

5-73-501. Legislative findings.

The General Assembly finds that:

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

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

(3) Criminals and other dangerous people can avoid background checks by buying firearms from unlicensed firearms sellers, whom they can easily meet online or at a gun show and who are not legally required to



conduct a background check before selling or transferring the firearm;

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

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

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

5-73-502. Definitions.

As used in this subchapter:

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

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

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

(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; and

(6) "Unlicensed person" means a person who does not hold a license as a dealer, importer, or manufacturer in firearms issued under 18

U.S.C. § 923(a), as it existed on January 1, 2023.

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

(a) Except as otherwise provided by law, 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.

(b) 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.

(c)(1) A licensed dealer who agrees to conduct a background check under 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 without limitation compliance with all recordkeeping requirements provided by law or by rule.

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

(d) Upon receiving a request for a background check from a licensed dealer under this section, the Arkansas Crime Information Center or other state or local agency under this section shall, in the same manner as it would for the sale or transfer 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.

(e) 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.

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

(2) If the response from the center 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.

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

5-73-504. Exceptions.

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

(1) The 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 law enforcement officer, commissioned security guard who may carry a firearm, member of the United States Armed Forces, or federal official;

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

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

(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 the temporary transfer:

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

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

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

(i) At an established shooting range authorized by

the governing body of the jurisdiction in which the established shooting range is located;

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

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

(iv) 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 the hunting or trapping; or

(v) While in the presence of the transferor.

5-73-505. Criminal penalties.

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

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

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

5-73-506. Fees.

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

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

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

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

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