

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

A Bill

HOUSE BILL 1761

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

For An Act To Be Entitled

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

Subtitle

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

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

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

25 Subchapter 5 – Background Check for Firearm Transfer
26 5-73-501. Legislative findings.

27 The General Assembly finds that:

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

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

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



1 conduct a background check before selling or transferring the firearm;

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

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

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

17
18 5-73-502. Definitions.

19 As used in this subchapter:

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

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

28 (3) "Licensed dealer" means a person who holds a license as a
29 dealer in firearms issued under 18 U.S.C. § 923(a), as it existed on January
30 1, 2023;

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

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

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

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

2
3 5-73-503. Lawful transfer of firearm – Background check required.

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

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

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

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

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

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

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

35 (2) If the response from the center indicates that the buyer or
36 transferee is ineligible to purchase or possess the firearm, the licensed

1 dealer shall return the firearm to the seller or transferor and the seller or
2 transferor shall not sell or transfer the firearm to the buyer or transferee.

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

6
7 5-73-504. Exceptions.

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

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

14 (2) The transfer of an antique firearm, as defined in 18 U.S.C.
15 § 921 (a)(16), as it existed on January 1, 2023;

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

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

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

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

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

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

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

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

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

36 (i) At an established shooting range authorized by

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

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

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

8 (iv) While hunting or trapping if the hunting or
9 trapping is legal in all places where the transferee possesses the firearm
10 and the transferee holds all licenses or permits required for the hunting or
11 trapping; or

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

13
14 5-73-505. Criminal penalties.

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

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

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

19
20 5-73-506. Fees.

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

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

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

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

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