

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 15-0538.01 Richard Sweetman x4333

HOUSE BILL 15-1086

HOUSE SPONSORSHIP

Neville P., Humphrey, Everett, Joshi, Saine, Nordberg, Ransom, Szabo, Van Winkle

SENATE SPONSORSHIP

Neville T., Lambert, Lundberg, Woods, Cooke, Baumgardner, Marble

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING THE COLORADO BUREAU OF INVESTIGATION**
102 **TO FACILITATE LAWFUL TRANSFERS OF FIREARMS BY TIMELY**
103 **PRODUCING CERTIFICATES FOR TRANSFEREES.**

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/billsummaries>.)

For transfers of machine guns, destructive devices, and certain types of firearms, federal law requires prospective transferees, in addition to submitting to a criminal records background check, to acquire a certificate from a law enforcement entity, which certificate states that:

! The certifying official is satisfied that the fingerprints and

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.

photograph accompanying the application are those of the applicant; and

- ! The certifying official has no information indicating that the receipt or possession of the firearm or device would place the transferee in violation of state or local law or that the transferee will use the firearm or device for an unlawful purpose.

The bill states that if a prospective transferee requests such a certificate from the Colorado bureau of investigation, then not later than 5 days after receiving the request, the director of the bureau, or his or her designee, shall either:

- ! Produce the certificate and transfer it to the possession of the prospective transferee; or
- ! Deny the certificate and provide the prospective transferee a written explanation of why the certificate was denied and an opportunity to provide additional information relating to the reason for the refusal.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-33.5-424, **add**
3 (3.2) as follows:

4 **24-33.5-424. National instant criminal background check**
5 **system - state point of contact - fee - grounds for denial of firearm**
6 **transfer - appeal - rule-making - unlawful acts - instant criminal**
7 **background check cash fund - creation.** (3.2) (a) IF, FOR THE PURPOSE
8 OF COMPLETING A TRANSFER OF A MACHINE GUN, DESTRUCTIVE DEVICE,
9 OR ANY OTHER FIREARM OR WEAPON AS DEFINED IN 27 CFR 479.11, A
10 PROSPECTIVE TRANSFEREE IS REQUIRED TO COMPLETE A CERTIFICATE AS
11 DESCRIBED IN 27 CFR 479.63 OR 27 CFR 479.85 AND THE PROSPECTIVE
12 TRANSFEREE REQUESTS SUCH A CERTIFICATE FROM THE BUREAU, THEN
13 NOT LATER THAN FIVE DAYS AFTER RECEIVING THE REQUEST, THE
14 DIRECTOR, OR HIS OR HER DESIGNEE, SHALL EITHER:

15 (I) PRODUCE THE CERTIFICATE AND TRANSFER IT TO THE
16 POSSESSION OF THE PROSPECTIVE TRANSFEREE; OR

1 (II) DENY THE CERTIFICATE AND PROVIDE THE PROSPECTIVE
2 TRANSFEREE:

3 (A) A WRITTEN EXPLANATION OF WHY THE CERTIFICATE WAS
4 DENIED; AND

5 (B) AN OPPORTUNITY TO PROVIDE ADDITIONAL INFORMATION
6 RELATING TO THE REASON FOR THE DENIAL.

7 (b) (I) IF THE DIRECTOR, OR HIS OR HER DESIGNEE, DENIES A
8 CERTIFICATE PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS
9 SUBSECTION (3.2), THE PROSPECTIVE TRANSFEREE MAY SEEK JUDICIAL
10 REVIEW OF THE DENIAL. THE PROSPECTIVE TRANSFEREE MAY SEEK
11 JUDICIAL REVIEW EITHER IN LIEU OF OR SUBSEQUENT TO THE DIRECTOR'S,
12 OR THE DIRECTOR'S DESIGNEE'S, SECOND REVIEW.

13 (II) THE PROCEDURES SPECIFIED IN RULE 106 (a) (4) AND (b) OF
14 THE COLORADO RULES OF CIVIL PROCEDURE DETERMINE THE TIMELINES
15 FOR FILING A COMPLAINT, AN ANSWER, AND BRIEFS FOR JUDICIAL REVIEW
16 PURSUANT TO THIS SUBSECTION (3.2).

17 (III) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
18 CONTRARY, AT A JUDICIAL REVIEW SOUGHT PURSUANT TO THIS
19 SUBSECTION (3.2), THE DIRECTOR, OR HIS OR HER DESIGNEE, HAS THE
20 BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE
21 PROSPECTIVE TRANSFEREE IS INELIGIBLE TO POSSESS A CERTIFICATE
22 UNDER CRITERIA SPECIFIED IN STATE OR FEDERAL LAW.

23 (IV) FOLLOWING COMPLETION OF A JUDICIAL REVIEW PURSUANT
24 TO THIS SUBSECTION (3.2), THE COURT MAY AWARD ATTORNEY FEES TO
25 THE PREVAILING PARTY.

26 (c) IF THE DIRECTOR, OR HIS OR HER DESIGNEE, PRODUCES A
27 CERTIFICATE AND TRANSFERS IT TO THE POSSESSION OF A PROSPECTIVE

1 TRANSFEREE PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS
2 SUBSECTION (3.2), THE BUREAU SHALL NOT RETAIN A RECORD OF
3 PROVIDING THE CERTIFICATE UNLESS THE RECORD IS REDACTED SO THAT
4 IT DOES NOT INDICATE THE PARTICULAR MODEL OR SERIAL NUMBER OF THE
5 FIREARM OR DEVICE FOR WHICH THE CERTIFICATE WAS REQUIRED.

6 **SECTION 2. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety.