

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

HOUSE BILL 1939

4
5 By: Representative D. Garner

For An Act To Be Entitled

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

Subtitle

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

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

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

Subchapter 5 – Background Check for Firearm Transfer

5-73-501. Legislative findings.

The General Assembly finds that:

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

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

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



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

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

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

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17 5-73-502. Definitions.

18 As used in this section:

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

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

27 (3) "Licensed dealer" means a person who holds a license as a
28 dealer in firearms issued under 18 U.S.C. § 923(a), as it existed on January
29 1, 2019;

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

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

34 (6) "Unlicensed person" means a person who does not hold a
35 license as a dealer, importer, or manufacturer in firearms issued under 18
36 U.S.C. § 923(a), as it existed on January 1, 2019.

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

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

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

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

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

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

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

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

34 (2) If the response from the center indicates that the buyer or
35 transferee is ineligible to purchase or possess the firearm, the licensed
36 dealer shall return the firearm to the seller or transferor and the seller or

1 transferor shall not sell or transfer the firearm to the buyer or transferee.

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

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6 5-73-504. Exceptions.

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

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

13 (2) The transfer of an antique firearm, as defined in 18 U.S.C.
14 § 921 (a)(16), as it existed on January 1, 2019;

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

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

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

22 (A) Is necessary to prevent imminent death or great bodily
23 harm; and

24 (B) Lasts only as long as immediately necessary to prevent
25 imminent death or great bodily harm;

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

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

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

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

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

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

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

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

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

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 12 5-73-505. Criminal penalties.

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

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

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

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 18 5-73-506. Fees.

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

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

28 (c) The center shall not charge a fee:

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

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