

CHAPTER 5

GOVERNMENT - STATE

SENATE BILL 00-125

BY SENATORS Owen, Lacy, Tanner, Blickensderfer, Epps, Hernandez, Pascoe, Rupert, and Weddig;
also REPRESENTATIVES Tool, Saliman, Berry, Bacon, Chavez, Coleman, Gagliardi, Gordon, Gotlieb, Grossman, Hagedorn,
Kaufman, Keller, Mace, Miller, Morrison, Plant, Ragsdale, Stengel, Tupa, Veiga, Williams S., Windels, and Zimmerman.

AN ACT

CONCERNING IMPLEMENTATION OF THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM
WITH THE COLORADO BUREAU OF INVESTIGATION SERVING AS THE STATE POINT OF CONTACT, AND
MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Legislative declaration. The general assembly hereby finds, determines, and declares that Congress passed the federal "Brady Handgun Violence Prevention Act", Public Law 103-159, and that the law primarily consisted of a temporary provision designed to last five years, codified at 18 U.S.C. sec. 922 (s), and a permanent provision, codified at 18 U.S.C. sec. 922 (t), designed to succeed the temporary provision. The general assembly further finds that under 18 U.S.C. sec. 922 (s), Colorado was permitted to conduct its own statewide criminal background check system for prospective handgun purchasers and that the system, formerly located in article 26.5 of title 12, Colorado Revised Statutes, was repealed on November 30, 1998, pursuant to state law. The general assembly further finds that the provisions of 18 U.S.C. sec. 922 (t) are now in effect, pursuant to which a national instant criminal background check system has been created and background checks are conducted prior to certain firearms transfers. While federal law generally preempts state law in this matter, the federal government has recognized the valuable experience and expertise that the state authorities developed through the implementation of their own criminal background check systems while the provisions of 18 U.S.C. sec. 922 (s) were in effect. As a result, the federal government has encouraged states to instruct state law enforcement agencies to provide assistance and to designate state law enforcement agencies to serve voluntarily as "points of contact" in implementing the provisions of 18 U.S.C. sec. 922 (t). In addition, 18 U.S.C. sec. 922 (t) provides that, while serving as a point of contact, a state law enforcement agency must meet or exceed federal standards and that a state, by law or rule, may

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

pursue its own policy so long as it is consistent with federal law. The general assembly thus finds that it is in the best interests of the state and its citizens that the general assembly designate a state law enforcement agency to serve as such a point of contact so that the public may be assured that the most accurate background check is performed on prospective firearms purchasers.

SECTION 2. 24-33.5-412 (1) (l), Colorado Revised Statutes, is amended to read:

24-33.5-412. Functions of bureau - legislative review. (1) The bureau has the following authority:

(l) To carry out the duties set forth in ~~article 26.5 of title 12, C.R.S.~~ SECTION 24-33.5-424 concerning the ~~statewide~~ NATIONAL instant criminal background check system ("NICS") in connection with the transfer of ~~handguns~~ FIREARMS;

SECTION 3. Part 4 of article 33.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33.5-424. National instant criminal background check system - state point of contact - grounds for denial of firearm transfer - appeal - rule-making - unlawful acts - repeal. (1) FOR PURPOSES OF THIS SECTION:

(a) "18 U.S.C. SEC. 922 (t)" MEANS 18 U.S.C. SEC. 922 (t) AS IT EXISTS AS OF THE EFFECTIVE DATE OF THIS SECTION, OR AS IT MAY BE AMENDED.

(b) "FIREARM" HAS THE SAME MEANING AS SET FORTH IN 18 U.S.C. SEC. 921 (a) (3), AS AMENDED.

(c) "NICS SYSTEM" MEANS THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CREATED BY PUBLIC LAW 103-159, KNOWN AS THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT", THE RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t).

(d) "TRANSFER" MEANS THE SALE OR DELIVERY OF ANY FIREARM IN THIS STATE BY A TRANSFEROR TO A TRANSFEREE. "TRANSFER" SHALL INCLUDE REDEMPTION OF A PAWNED FIREARM BY ANY PERSON WHO IS NOT LICENSED AS A FEDERAL FIREARMS LICENSEE BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS. "TRANSFER" SHALL NOT INCLUDE THE RETURN OR REPLACEMENT OF A FIREARM THAT HAD BEEN DELIVERED TO A FEDERAL FIREARMS LICENSEE FOR THE SOLE PURPOSE OF REPAIR OR CUSTOMIZING.

(e) "TRANSFEREE" MEANS ANY PERSON WHO IS NOT LICENSED AS A FEDERAL FIREARMS LICENSEE BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, IN ACCORDANCE WITH THE FEDERAL "GUN CONTROL ACT OF 1968", CHAPTER 44 OF TITLE 18 U.S.C., AS AMENDED, AND TO WHOM A TRANSFEROR WISHES TO SELL OR DELIVER A FIREARM.

(f) "TRANSFEROR" MEANS ANY LICENSED IMPORTER, LICENSED MANUFACTURER, OR LICENSED DEALER AS DEFINED IN 18 U.S.C. SEC. 921 (9), (10), AND (11), AS AMENDED, RESPECTIVELY.

(2) THE BUREAU IS HEREBY AUTHORIZED TO SERVE AS A STATE POINT OF CONTACT FOR IMPLEMENTATION OF 18 U.S.C. SEC. 922 (t), ALL FEDERAL REGULATIONS AND APPLICABLE GUIDELINES ADOPTED PURSUANT THERETO, AND THE NICS SYSTEM.

(3) (a) THE BUREAU, ACTING AS THE STATE POINT OF CONTACT FOR IMPLEMENTATION OF 18 U.S.C. SEC. 922 (t), SHALL TRANSMIT A REQUEST FOR A BACKGROUND CHECK IN CONNECTION WITH THE PROSPECTIVE TRANSFER OF A FIREARM TO THE NICS SYSTEM AND MAY ALSO SEARCH OTHER DATABASES. THE BUREAU SHALL DENY A TRANSFER OF A FIREARM TO A PROSPECTIVE TRANSFEREE IF THE TRANSFER WOULD VIOLATE 18 U.S.C. SEC. 922 (g) OR (n) OR RESULT IN THE VIOLATION OF ANY PROVISION OF STATE LAW, INCLUDING BUT NOT LIMITED TO SECTION 18-12-108 (4) (c), C.R.S., INVOLVING ACTS WHICH, IF COMMITTED BY AN ADULT, WOULD CONSTITUTE A BURGLARY, ARSON, OR ANY FELONY INVOLVING THE USE OF FORCE OR THE USE OF A DEADLY WEAPON.

(b) (I) IN ADDITION TO THE GROUNDS FOR DENIAL SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE BUREAU SHALL DENY A TRANSFER OF A FIREARM IF, AT ANY TIME THE BUREAU TRANSMITS THE REQUEST OR SEARCHES OTHER DATABASES, INFORMATION INDICATES THAT THE PROSPECTIVE TRANSFEREE:

(A) HAS BEEN ARRESTED FOR OR CHARGED WITH A CRIME FOR WHICH THE PROSPECTIVE TRANSFEREE, IF CONVICTED, WOULD BE PROHIBITED UNDER STATE OR FEDERAL LAW FROM PURCHASING, RECEIVING, OR POSSESSING A FIREARM AND EITHER THERE HAS BEEN NO FINAL DISPOSITION OF THE CASE OR THE FINAL DISPOSITION IS NOT NOTED IN THE OTHER DATABASES; OR

(B) IS THE SUBJECT OF AN INDICTMENT, AN INFORMATION, OR A FELONY COMPLAINT ALLEGING THAT THE PROSPECTIVE TRANSFEREE HAS COMMITTED A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR AS DEFINED IN 18 U.S.C. SEC. 921 (a) (20), AS AMENDED, AND EITHER THERE HAS BEEN NO FINAL DISPOSITION OF THE CASE OR THE FINAL DISPOSITION IS NOT NOTED IN THE OTHER DATABASES.

(II) THIS PARAGRAPH (b) SHALL BE REPEALED, EFFECTIVE JULY 1, 2010.

(c) THE BUREAU IS AUTHORIZED TO COOPERATE WITH FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES TO PERFORM OR ASSIST ANY OTHER LAW ENFORCEMENT AGENCY IN PERFORMING ANY FIREARM RETRIEVALS, AND TO ASSIST IN THE PROSECUTION OF ANY RESCINDED TRANSFERS.

(4) PURSUANT TO SECTION 16-21-103 (4) (c), C.R.S., AND SECTION 19-1-304 (1) (b.8), C.R.S., THE BUREAU SHALL RECEIVE AND PROCESS INFORMATION CONCERNING FINAL CASE DISPOSITION DATA OF ANY CASES PROSECUTED IN A COURT IN THIS STATE WITHIN SEVENTY-TWO HOURS AFTER THE FINAL DISPOSITION OF THE CASE FOR PURPOSES OF CARRYING OUT ITS DUTIES UNDER THIS SECTION.

(5) (a) UPON DENIAL OF A FIREARM TRANSFER, THE BUREAU SHALL NOTIFY THE TRANSFEROR AND SEND NOTICE OF THE DENIAL TO THE NICS SYSTEM, PURSUANT TO 18 U.S.C. SEC. 922 (t). IN ADDITION, THE BUREAU SHALL IMMEDIATELY SEND NOTIFICATION OF SUCH DENIAL AND THE BASIS FOR THE DENIAL TO THE FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES HAVING JURISDICTION OVER THE

AREA IN WHICH THE TRANSFEREE RESIDES AND IN WHICH THE TRANSFEROR CONDUCTS ANY BUSINESS.

(b) UPON DENIAL OF A FIREARM TRANSFER, THE TRANSFEROR SHALL PROVIDE THE TRANSFEREE WITH WRITTEN INFORMATION PREPARED BY THE BUREAU CONCERNING THE PROCEDURE BY WHICH THE TRANSFEREE MAY REQUEST A REVIEW OF THE DENIAL AND OF THE INSTANT CRIMINAL BACKGROUND CHECK RECORDS THAT PROMPTED THE DENIAL. THE BUREAU SHALL RENDER A FINAL ADMINISTRATIVE DECISION REGARDING THE DENIAL WITHIN THIRTY DAYS AFTER RECEIVING INFORMATION FROM THE TRANSFEREE THAT DEMONSTRATES THE TRANSFER WAS IMPROPERLY DENIED.

(c) IN THE CASE OF ANY TRANSFER DENIED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION, THE INABILITY OF THE TRANSFEREE TO OBTAIN THE FINAL DISPOSITION OF A CASE THAT IS NO LONGER PENDING SHALL NOT CONSTITUTE THE BASIS FOR THE CONTINUED DENIAL OF THE TRANSFER SO LONG AS THE TRANSFEREE PROVIDES A LETTER SIGNED AND VERIFIED BY THE CLERK OF THE COURT OR HIS OR HER DESIGNEE THAT INDICATES THAT NO FINAL CASE DISPOSITION INFORMATION IS AVAILABLE. UPON PRESENTATION OF SUCH LETTER TO THE BUREAU, THE BUREAU SHALL REVERSE THE DENIAL.

(d) IF THE BUREAU REVERSES A DENIAL, THE BUREAU SHALL IMMEDIATELY REQUEST THAT THE AGENCY THAT PROVIDED THE RECORDS PROMPTING THE DENIAL MAKE A PERMANENT CHANGE TO SUCH RECORDS IF NECESSARY TO REFLECT ACCURATE INFORMATION. IN ADDITION, THE BUREAU SHALL PROVIDE IMMEDIATE NOTIFICATION OF SUCH REVERSAL TO ALL AGENCIES AND ENTITIES THAT HAD BEEN PREVIOUSLY NOTIFIED OF A DENIAL PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5).

(6) IF IN THE COURSE OF CONDUCTING ANY BACKGROUND CHECK PURSUANT TO THIS SECTION, WHETHER THE FIREARMS TRANSACTION IS APPROVED OR DENIED, THE BUREAU OBTAINS INFORMATION THAT INDICATES THE PROSPECTIVE TRANSFEREE IS THE SUBJECT OF AN OUTSTANDING WARRANT, THE BUREAU SHALL IMMEDIATELY PROVIDE NOTIFICATION OF SUCH WARRANT TO THE FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES HAVING JURISDICTION OVER THE AREA IN WHICH THE TRANSFEREE RESIDES AND IN WHICH THE TRANSFEROR CONDUCTS ANY BUSINESS.

(7) (a) THE EXECUTIVE DIRECTOR OR HIS OR HER DESIGNEE SHALL ADOPT SUCH RULES AS ARE NECESSARY TO:

(I) CARRY OUT THE DUTIES OF THE BUREAU AS THE STATE POINT OF CONTACT, AS THOSE DUTIES ARE SET FORTH IN FEDERAL LAW, AND ASSIST IN IMPLEMENTING 18 U.S.C. SEC. 922 (t), ALL FEDERAL REGULATIONS AND APPLICABLE GUIDELINES ADOPTED PURSUANT THERETO, AND THE NICS SYSTEM; AND

(II) ENSURE THE PROPER MAINTENANCE, CONFIDENTIALITY, AND SECURITY OF ALL RECORDS AND DATA PROVIDED PURSUANT TO THIS SECTION.

(b) THE RULES ADOPTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) PROCEDURES WHEREBY A PROSPECTIVE TRANSFEREE WHOSE TRANSFER IS DENIED MAY REQUEST A REVIEW OF THE DENIAL AND OF THE INSTANT CRIMINAL

BACKGROUND CHECK RECORDS THAT PROMPTED THE DENIAL;

(II) PROCEDURES REGARDING RETENTION OF RECORDS OBTAINED OR CREATED FOR PURPOSES OF THIS SECTION OR FOR IMPLEMENTATION OF 18 U.S.C. SEC. 922 (t); EXCEPT THAT THE BUREAU SHALL NOT RETAIN A RECORD FOR MORE THAN FORTY-EIGHT HOURS AFTER THE DAY ON WHICH THE BUREAU APPROVES THE TRANSFER;

(III) PROCEDURES AND FORMS ADOPTED BY THE BUREAU THAT REQUEST INFORMATION FROM AND ESTABLISH PROPER IDENTIFICATION OF A PROSPECTIVE TRANSFEREE AND THAT MAY CORRESPOND WITH ANY FIREARMS TRANSACTION RECORD REQUIRED BY 18 U.S.C. SEC. 922 (t). SUCH PROCEDURES AND FORMS SHALL NOT PRECLUDE ANY PERSON FROM MAKING A LAWFUL FIREARM TRANSFER UNDER THIS SECTION.

(IV) PROCEDURES FOR CARRYING OUT THE DUTIES UNDER THIS SECTION, INCLUDING AT A MINIMUM:

(A) THAT THE BUREAU SHALL BE OPEN FOR BUSINESS AT LEAST TWELVE HOURS PER DAY EVERY CALENDAR DAY, EXCEPT CHRISTMAS DAY AND THANKSGIVING DAY, IN ORDER TO TRANSMIT THE REQUESTS FOR A BACKGROUND CHECK TO THE NICS SYSTEM AND SEARCH OTHER DATABASES;

(B) THAT THE BUREAU SHALL PROVIDE A TOLL-FREE TELEPHONE NUMBER FOR ANY PERSON CALLING FROM WITHIN THE STATE THAT IS OPERATIONAL EVERY DAY THAT THE OFFICE IS OPEN FOR BUSINESS FOR THE PURPOSE OF RESPONDING TO REQUESTS FROM TRANSFERORS IN ACCORDANCE WITH THIS SECTION; AND

(C) THAT THE BUREAU SHALL EMPLOY AND TRAIN PERSONNEL AT LEVELS THAT ENSURE PROMPT PROCESSING OF THE REASONABLY ANTICIPATED VOLUME OF INQUIRIES RECEIVED UNDER THIS SECTION.

(8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE ANY CIVIL CAUSE OF ACTION FOR DAMAGES IN ADDITION TO THAT WHICH IS AVAILABLE UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF THIS TITLE.

(9) NO ACT PERFORMED BY THE BUREAU OR ITS AGENTS IN CARRYING OUT THEIR LAWFUL DUTIES UNDER THIS SECTION SHALL BE CONSTRUED TO BE A VIOLATION OF ANY PROVISION OF TITLE 18, C.R.S.

(10) (a) IT IS UNLAWFUL FOR:

(I) ANY PERSON, IN CONNECTION WITH THE ACQUISITION OR ATTEMPTED ACQUISITION OF A FIREARM FROM ANY TRANSFEROR, TO WILLFULLY MAKE ANY FALSE OR FICTITIOUS ORAL OR WRITTEN STATEMENT OR TO FURNISH OR EXHIBIT ANY FALSE, FICTITIOUS, OR MISREPRESENTED IDENTIFICATION THAT IS INTENDED OR LIKELY TO DECEIVE SUCH TRANSFEROR WITH RESPECT TO ANY FACT MATERIAL TO THE LAWFULNESS OF THE SALE OR OTHER DISPOSITION OF SUCH FIREARM UNDER FEDERAL OR STATE LAW;

(II) ANY TRANSFEROR KNOWINGLY TO REQUEST CRIMINAL HISTORY RECORD

INFORMATION OR A BACKGROUND CHECK UNDER FALSE PRETENSES OR KNOWINGLY TO DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION TO ANY PERSON OTHER THAN THE SUBJECT OF SUCH INFORMATION;

(III) ANY AGENT OR EMPLOYEE OR FORMER AGENT OR EMPLOYEE OF THE BUREAU KNOWINGLY TO VIOLATE THE PROVISIONS OF THIS SECTION.

(b) ANY PERSON WHO VIOLATES THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (10) COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-106, C.R.S.

(11) ANY TRANSFEROR WHO COMPLIES WITH THE PROVISIONS OF THIS SECTION SHALL NOT BE SUBJECT TO ANY CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION THAT MAY ARISE FROM THE LAWFUL TRANSFER OR LAWFUL DENIAL OF THE TRANSFER OF A FIREARM.

SECTION 4. 18-4-412, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-4-412. Theft of medical records or medical information - penalty.

(4) THE OBTAINING, ACCESSING, USE, OR DISCLOSURE OF RELEVANT MEDICAL RECORDS OR MEDICAL INFORMATION PURSUANT TO 18 U.S.C. SEC. 922 (t) AND SECTION 24-33.5-424, C.R.S., BY THE COLORADO BUREAU OF INVESTIGATION OR BY ANY OF ITS EMPLOYEES AND ACCESSING SUCH RECORDS AND INFORMATION THROUGH THE NICS SYSTEM SHALL NOT CONSTITUTE THEFT OF A MEDICAL RECORD OR MEDICAL INFORMATION UNDER THIS SECTION.

SECTION 5. 19-1-304 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

19-1-304. Juvenile delinquency records. (1) (b.8) THE COURT SHALL REPORT THE FINAL DISPOSITION CONCERNING A JUVENILE WHO HAS BEEN ADJUDICATED A JUVENILE DELINQUENT TO THE COLORADO BUREAU OF INVESTIGATION IN A FORM THAT IS ELECTRONICALLY CONSISTENT WITH APPLICABLE LAW. THE REPORT SHALL BE MADE WITHIN SEVENTY-TWO HOURS AFTER THE FINAL DISPOSITION; EXCEPT THAT THE TIME PERIOD SHALL NOT INCLUDE SATURDAYS, SUNDAYS, OR LEGAL HOLIDAYS. THE REPORT SHALL INCLUDE THE INFORMATION PROVIDED TO THE COURT IN ACCORDANCE WITH PARAGRAPH (b.7) OF THIS SUBSECTION (1), THE DISPOSITION OF EACH CHARGE, AND THE COURT CASE NUMBER, AND THE COLORADO BUREAU OF INVESTIGATION SHALL REFLECT ANY CHANGE OF STATUS BUT SHALL NOT DELETE OR ELIMINATE INFORMATION CONCERNING THE ORIGINAL CHARGE.

SECTION 6. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 1999, the sum of two hundred sixty-six thousand three hundred seventy dollars (\$266,370) and 4.8 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 7. Effective date - applicability clause. The provisions of this act shall take effect upon passage and the provisions of section 24-33.5-424 (10), as

enacted in this act, shall apply to offenses committed on or after said date.

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

Approved: March 7, 2000