NEVADA
SECRETARY OF STATE
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LAS VEGAS NV

THE BACKGROUND CHECK INITIATIVE

Explanation – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Sec. 1. Short Title. Sections 1 to 9, inclusive, of this act may be cited as The Background Check Act.

Sec. 2. Preamble. The People of Nevada do hereby find and declare that:

1. To promote public safety, federal law currently prohibits felons, domestic abusers, the severely mentally ill, and other dangerous people from buying or possessing firearms;

2. Federally licensed firearms dealers are required to run background checks on their prospective buyers to ensure they are not prohibited from buying or possessing firearms;

3. Criminals and other dangerous people can avoid background checks by buying guns from unlicensed firearms sellers, whom they can easily meet online or at gun shows and who are not legally required to run background checks before selling or transferring firearms;

4. Due to this loophole, millions of guns exchange hands each year in the United States without a background check;

5. The background check process is quick and convenient: Over 90% of federal background checks are completed instantaneously and over 97% of Nevadans live within 10 miles of a licensed gun dealer;

6. We have the right to bear arms, but with rights come responsibilities, including the responsibility to keep guns out of the hands of convicted felons and domestic abusers;

7. To promote public safety and protect our communities, and to create a fair, level playing field for all gun sellers, the people of Nevada find it necessary to more effectively enforce current law prohibiting dangerous persons from purchasing and possessing firearms by requiring background checks on all firearms sales and transfers, with reasonable exceptions, including for immediate family members, hunting, and self-defense.

Sec. 3. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 through 7, inclusive, of this act.

Sec. 4. Definitions. ***As used in NRS 202.254 and sections 5 to 7, inclusive, of this act, unless the context otherwise requires:***

1. "Hunting" has the meaning ascribed to it in NRS 501.050.

2. "Licensed dealer" means a person who holds a license as a dealer in firearms issued pursuant to 18 U.S.C. § 923(a).

3. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

4. "Unlicensed person" means a person who does not hold a license as a dealer, importer, or manufacturer in firearms issued pursuant to 18 U.S.C. § 923(a).

5. "Transferee" means an unlicensed person who wishes or intends to receive a firearm from another unlicensed person.

6. "Transferor" means an unlicensed person who wishes or intends to transfer a firearm to another unlicensed person.

7. "Trapping" has the meaning ascribed to it in NRS 501.090.

8. "Central Repository" has the meaning ascribed to it in NRS 179A.045.

Sec. 5. NRS 202.254 is hereby amended to read as follows:

1. ***Except as otherwise provided in section 6 of this act, 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 in compliance with this section.*** ~~[A private person who wishes transfer a firearm to another person may, before transferring the firearm, request that the Central Repository for Nevada Records of Criminal History perform a background check on the person who wishes to acquire the firearm.]~~

2. 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. ~~[The requests the information pursuant to subsection 1 shall provide the Central Repository with identifying information about the person who wishes to acquire the firearm.]~~

3. ***A licensed dealer who agrees to conduct a background check pursuant to this section shall take possession of the firearm and 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, but not limited to, all recordkeeping requirements, except that:***

(a) the licensed dealer must contact the National Instant Criminal Background Check System, as described in 18 U.S.C. 922(t), and not the Central Repository, to determine whether the buyer or transferee is eligible to purchase and possess firearms under state and federal law; and

(b) the seller or transferor may remove the firearm from the business premises while the background check is being conducted, provided that before the seller or transferor sells or transfers the firearm to the buyer or transferee, the seller or transferor and the buyer or transferee shall return to the licensed dealer who shall again take possession of the firearm prior to the completion of the sale or transfer.

~~[Upon receiving a request from a private person pursuant to subsection 1 and the identifying information required pursuant to subsection 1 , the Central Repository shall within 5 business days after receiving the request:~~

~~(a) Perform a background check on the person who wishes to acquire the firearm , ; and~~

~~(b) Notify the person who requests the information whether the information available to the Central Repository indicates that the receipt of a firearm by the person who wishes to acquire the firearm would violate a state or federal law.]~~

4. ***A licensed dealer who agrees to conduct a background check pursuant to this section shall inform the seller or transferor and the buyer or transferee of the response from the National Instant Criminal Background Check System. If the response 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. ~~[If the person who requests the information does not receive notification from the Central Repository regarding the request within 5 business days after making the request, the person may presume that the receipt of a firearm by the person who wishes to acquire the firearm would not violate a state or federal law.]~~

5. ~~[The Central Repository]~~ ***A licensed dealer*** may charge a reasonable fee for ~~[performing]~~ ***conducting*** a background check ***and facilitating a firearm sale or transfer between unlicensed persons*** ~~[and notifying a person of the results of the background check]~~ pursuant to this section.

~~[6. The failure of a person to request the Central Repository to perform a background check pursuant to this section before transferring a firearm to another person does not give rise to any civil cause of action.]~~

Sec. 6. ***The provisions of NRS 202.254 do not apply to:***

1. The sale or 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 peace officer, security guard entitled to carry a firearm under NAC 648.345, member of the armed forces, or federal official.

2. The sale or transfer of an antique firearm, as defined in 18 U.S.C. §921(16).

3. The sale or transfer of a firearm between immediate family members, which for the purposes of this chapter means spouses and domestic partners and any of the following relations, whether by whole or half blood, adoption, or step-relation: parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews.

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 such transfer:

(a) is necessary to prevent imminent death or great bodily harm; and

(b) lasts only as long as immediately necessary to prevent such imminent death or great bodily harm.

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) such 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 such range is located;

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

(iii) While participating in or practicing for a 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 such hunting or trapping; or

(v) While in the presence of the transferor.

Sec. 7. ***Penalty.***

1. An unlicensed person who sells or voluntarily transfers one or more firearms to another unlicensed person in violation of NRS 202.254:

(a) For the first conviction involving the sale or transfer of one or more firearms, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140; and

(b) For the second and subsequent convictions involving the sale or transfer of one or more firearms, is guilty of a category C felony and shall be punished as provided in NRS 193.130(2)(c).

Sec. 8. Severability. If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. Effective Date. This act shall become effective on October 1, 2015 if approved by the legislature, or on January 1, 2017 if approved by the voters.

[The remainder of this page is blank.]

DESCRIPTION OF EFFECT

Under current law, federally licensed gun dealers are required to perform criminal and public safety background checks on buyers before transferring guns to them. However, due to a loophole in the law, a background check is not required when a person obtains a gun from an unlicensed seller, making it easier for felons, domestic abusers, and other dangerous people to buy guns. This initiative requires that an unlicensed person who wishes to sell or transfer a firearm to another person conduct the transfer through a federally licensed gun dealer who runs a background check on the potential buyer or transferee. A licensed dealer may charge a reasonable fee for this service. Certain transfers will be exempt from this requirement, including transfers between immediate family members and temporary transfers while hunting and for immediate self-defense. A licensed dealer who agrees to facilitate a transfer must comply with all requirements of state and federal law concerning the transfer of a firearm as though the licensed dealer were selling the firearm from his or her inventory, except that the background check must be run through the National Instant Criminal Background Check System and not the Central Repository for Nevada Records of Criminal History.

County of _____ **(Only registered voters of this county may sign below)**
Petition District:_____ **(Only registered voters of this petition district may sign below)**

			This space for Office Use Only
1	PRINT YOUR NAME (first, initial, last)	RESIDENCE ADDRESS ONLY	
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AFFIDAVIT OF CIRCULATOR

(To be signed by circulator in the presence of a notary public)

STATE OF NEVADA)
)
County of _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

_____
Signature of Circulator

Subscribed and sworn to or affirmed before me this

____ day of _____, 2014, by_____.

_____
Notary Public