

Representative Matt Throckmorton proposes the following substitute bill:

FIREARM CRIMINAL BACKGROUND CHECK

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Morgan Philpot

This act modifies provisions related to firearm criminal background checks. The act provides that a National Instant Background Check shall be required to purchase a firearm. The act provides an effective date.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53-10-202.5, as enacted by Chapter 227, Laws of Utah 1999

76-10-526, as last amended by Chapters 90 and 303, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-10-202.5** is amended to read:

53-10-202.5. Bureau services -- Fees.

The bureau shall collect fees for the following services:

- (1) applicant fingerprint card as determined by Section 53-10-108;
- (2) bail enforcement licensing as determined by Section 53-11-115;
- (3) concealed firearm permit as determined by Section 53-5-707;
- (4) expungement certificate of eligibility as determined by Section 77-18-11;
- ~~[(5) firearm purchase background check as determined by Section 76-10-526;]~~
- ~~[(6)]~~ (5) name check as determined by Section 53-10-108;
- ~~[(7)]~~ (6) private investigator licensing as determined by Section 53-9-111; and
- ~~[(8)]~~ (7) right of access as determined by Section 53-10-108.

Section 2. Section **76-10-526** is amended to read:



26 **76-10-526. Criminal background check prior to purchase of a firearm -- Exemption**
27 **for concealed firearm permit holders.**

28 (1) A criminal background check required by this section shall only apply to the purchase
29 of a handgun until federal law requires the background check to extend to other firearms.

30 (2) At the time that federal law extends the criminal background check requirement to
31 other firearms, the division shall make rules to extend the background checks required under this
32 section to the other firearms.

33 (3) For purposes of this section, "valid permit to carry a concealed firearm" does not
34 include a temporary permit issued ~~[pursuant to]~~ under Section 53-5-705.

35 (4) To establish personal identification and residence in this state for purposes of this part,
36 a dealer shall require any person receiving a firearm to present:

37 (a) one photo identification on a form issued by a governmental agency of the state; and

38 (b) one other documentation of residence which must show an address identical to that
39 shown on the photo identification form.

40 (5) A criminal history background check conducted through the National Instant
41 Background Check System, hereafter referred to as "NICS background check," is required for the
42 sale of a firearm by a licensed firearm dealer in the state.

43 (6) (a) Any person, except a dealer, purchasing a firearm from a dealer shall consent in
44 writing to ~~[a criminal]~~ the NICS background check, on a form provided by the division.

45 (b) The form shall ~~[also]~~ contain the following information:

46 ~~[(a)]~~ (i) the dealer identification number;

47 ~~[(b)]~~ (ii) the name and address of the person receiving the firearm;

48 ~~[(c)]~~ (iii) the date of birth, height, weight, eye color, and hair color of the person receiving
49 the firearm; and

50 ~~[(d)]~~ (iv) the Social Security number or any other identification number of the person
51 receiving the firearm.

52 (7) (a) The dealer shall send the form required by Subsection (6) to the division
53 immediately upon its completion.

54 (b) ~~[No]~~ A dealer ~~[shall]~~ may not sell or transfer any firearm to any person until the dealer
55 has provided the division with the information in Subsection (6) and has received approval from
56 the division under Subsection (9).

57 (8) The dealer shall make a request for ~~[criminal history]~~ the NICS background
58 ~~[information]~~ check by telephone or other electronic means to the division and shall receive
59 approval or denial of the inquiry by telephone or other electronic means.

60 (9) When the dealer calls for or requests ~~[a criminal history]~~ the NICS background check,
61 the division shall:

62 (a) ~~[review the criminal history files, including juvenile court records;]~~ process the request
63 through the NICS to determine if the person is prohibited from purchasing, possessing, or
64 transferring a firearm by state or federal law;

65 (b) inform the dealer that:

66 (i) the records indicate the person is so prohibited; or

67 (ii) the person is approved for purchasing, possessing, or transferring a firearm;

68 (c) provide the dealer with a unique transaction number for that inquiry; and

69 (d) provide a response to the requesting dealer during the call for a criminal background,
70 or by return call, or other electronic means, without delay, except in case of electronic failure or
71 other circumstances beyond the control of the division, the division shall advise the dealer of the
72 reason for the delay and give the dealer an estimate of the length of the delay.

73 (10) (a) The division shall ~~[not maintain any]~~ immediately destroy all records of the
74 ~~[criminal history]~~ NICS background check ~~[longer than 20 days from the date of the dealer's~~
75 ~~request]~~ if the division determines that the person receiving the gun is not prohibited from
76 purchasing, possessing, or transferring the firearm under state or federal law.

77 (b) However, the division shall maintain a log of requests containing the dealer's federal
78 firearms number, the transaction number, and the transaction date for a period of 12 months.

79 (11) If the ~~[criminal history]~~ NICS background check discloses information indicating that
80 the person attempting to purchase the firearm is prohibited from purchasing, possessing, or
81 transferring a firearm, the division shall inform the law enforcement agency in the jurisdiction
82 where the person resides.

83 (12) If a person is denied the right to purchase a firearm under this section, the person may
84 review his criminal history information and may challenge or amend the information as provided
85 in Section 53-10-108.

86 (13) The division shall make rules as provided in Title 63, Chapter 46a, Utah
87 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records

88 provided by the division [~~pursuant to~~] under this part are in conformance with the requirements
89 of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

90 (14) [~~(a) All dealers shall collect a criminal history~~] Neither the division nor a dealer may
91 charge a fee for the NICS background check [~~fee which is \$7.50. This fee remains in effect until~~
92 ~~changed by the division through the process under Section 63-38-3.2~~] required under this section.

93 [~~(b) The dealer shall forward at one time all fees collected for criminal history background~~
94 ~~checks performed during the month to the division by the last day of the month following the sale~~
95 ~~of a firearm. The division shall deposit the fees in the General Fund as dedicated credits to cover~~
96 ~~the cost of administering and conducting the criminal history background check program.~~]

97 (15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part
98 7, Concealed Weapon Act, shall be exempt from the background check [~~and corresponding fee~~]
99 required in this section for the purchase of a firearm if:

100 (a) the person presents his concealed firearm permit to the dealer prior to purchase of the
101 firearm; and

102 (b) the dealer verifies with the division that the person's concealed firearm permit is valid.

103 **Section 3. Effective date.**

104 This act takes effect on July 1, 2002.