

Representative Matt Throckmorton proposes the following substitute bill:

1 **FIREARM CRIMINAL BACKGROUND CHECK**

2 **AMENDMENTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: J. Morgan Philpot**

6 **This act modifies provisions related to firearm criminal background checks. The act**
7 **removes the requirement for a state criminal background check for the purchase of a**
8 **firearm. The act provides an effective date.**

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

10 AMENDS:

11 **53-10-202.5**, as enacted by Chapter 227, Laws of Utah 1999

12 **76-10-501**, as last amended by Chapter 111, Laws of Utah 2001

13 **76-10-526**, as last amended by Chapters 90 and 303, Laws of Utah 2000

14 **76-10-527**, as last amended by Chapter 187, Laws of Utah 1998

15 **78-3a-206**, as last amended by Chapter 120, Laws of Utah 2001

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

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

18 **53-10-202.5. Bureau services -- Fees.**

19 The bureau shall collect fees for the following services:

20 (1) applicant fingerprint card as determined by Section 53-10-108;

21 (2) bail enforcement licensing as determined by Section 53-11-115;

22 (3) concealed firearm permit as determined by Section 53-5-707;

23 (4) expungement certificate of eligibility as determined by Section 77-18-11;

24 ~~[(5) firearm purchase background check as determined by Section 76-10-526;]~~

25 ~~[(6)]~~ (5) name check as determined by Section 53-10-108;



26 [~~7~~] (6) private investigator licensing as determined by Section 53-9-111; and
27 [~~8~~] (7) right of access as determined by Section 53-10-108.

28 Section 2. Section **76-10-501** is amended to read:

29 **76-10-501. Definitions.**

30 As used in this part:

31 (1) (a) "Antique firearm" means any firearm:

32 (i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system; and

33 (B) that was manufactured in or before 1898; or

34 (ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:

35 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed

36 ammunition; or

37 (B) uses rimfire or centerfire fixed ammunition which is:

38 (I) no longer manufactured in the United States; and

39 (II) is not readily available in ordinary channels of commercial trade; or

40 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

41 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed

42 ammunition.

43 (b) "Antique firearm" does not include:

44 (i) any weapon that incorporates a firearm frame or receiver;

45 (ii) any firearm that is converted into a muzzle loading weapon; or

46 (iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition by

47 replacing the:

48 (A) barrel;

49 (B) bolt;

50 (C) breechblock; or

51 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

52 (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden,

53 or secreted in a manner that the public would not be aware of its presence and is readily accessible

54 for immediate use.

55 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a

56 firearm which is unloaded and is securely encased.

57 (3) "Criminal history background check" means a criminal background check conducted
58 by a licensed firearms dealer on every purchaser of a handgun through the division or the local law
59 enforcement agency where the firearms dealer conducts business.

60 (4) "Curio or relic firearm" means any firearm that:

61 (a) is of special interest to a collector because of a quality that is not associated with
62 firearms intended for:

63 (i) sporting use;

64 (ii) use as an offensive weapon; or

65 (iii) use as a defensive weapon;

66 (b) (i) was manufactured at least 50 years prior to the current date; and

67 (ii) is not a replica of a firearm described in Subsection (4)(b)(i);

68 (c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms
69 to be a curio or relic of museum interest;

70 (d) derives a substantial part of its monetary value:

71 (i) from the fact that the firearm is:

72 (A) novel;

73 (B) rare; or

74 (C) bizarre; or

75 (ii) because of the firearm's association with an historical:

76 (A) figure;

77 (B) period; or

78 (C) event; and

79 (e) has been designated as a curio or relic firearm by the director of the United States
80 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

81 (5) (a) "Dangerous weapon" means any item that in the manner of its use or intended use
82 is capable of causing death or serious bodily injury. The following factors shall be used in
83 determining whether a knife, or any other item, object, or thing not commonly known as a
84 dangerous weapon is a dangerous weapon:

85 (i) the character of the instrument, object, or thing;

86 (ii) the character of the wound produced, if any;

87 (iii) the manner in which the instrument, object, or thing was used; and

88 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

89 (b) "Dangerous weapon" does not include any explosive, chemical, or incendiary device
90 as defined by Section 76-10-306.

91 (6) "Dealer" means every person who is licensed under crimes and criminal procedure, 18
92 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun,
93 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

94 [~~7~~] "~~Division~~" means the ~~Criminal Investigations and Technical Services Division of the~~
95 ~~Department of Public Safety, created in Section 53-10-103.~~]

96 [~~8~~] 7 "Enter" means intrusion of the entire body.

97 [~~9~~] 8 (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
98 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
99 a projectile by action of an explosive.

100 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique
101 firearm.

102 [~~10~~] "~~Firearms transaction record form~~" means a form created by the division to be
103 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.]

104 [~~11~~] 9 "Fully automatic weapon" means any firearm which fires, is designed to fire, or
105 can be readily restored to fire, automatically more than one shot without manual reloading by a
106 single function of the trigger.

107 [~~12~~] 10 (a) "Handgun" means a pistol, revolver, or other firearm of any description,
108 loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of
109 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

110 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or
111 revolver" do not include an antique firearm.

112 [~~13~~] 11 "House of worship" means a church, temple, synagogue, mosque, or other
113 building set apart primarily for the purpose of worship in which religious services are held and the
114 main body of which is kept for that use and not put to any other use inconsistent with its primary
115 purpose.

116 [~~14~~] 12 "Prohibited area" means any place where it is unlawful to discharge a firearm.

117 [~~15~~] 13 "Readily accessible for immediate use" means that a firearm or other dangerous
118 weapon is carried on the person or within such close proximity and in such a manner that it can

119 be retrieved and used as readily as if carried on the person.

120 ~~[(16)]~~ (14) "Residence" means an improvement to real property used or occupied as a
121 primary or secondary residence.

122 ~~[(17)]~~ (15) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
123 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
124 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
125 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
126 inches.

127 ~~[(18)]~~ (16) "Securely encased" means not readily accessible for immediate use, such as
128 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
129 storage area of a motor vehicle, not including a glove box or console box.

130 ~~[(19)]~~ (17) "State entity" means each department, commission, board, council, agency,
131 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
132 unit, bureau, panel, or other administrative unit of the state.

133 ~~[(20)]~~ (18) "Violent felony" means the same as defined in Section 76-3-203.5.

134 Section 3. Section **76-10-526** is amended to read:

135 **76-10-526. Criminal background check prior to purchase of a firearm.**

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

138 ~~[(2) At the time that federal law extends the criminal background check requirement to
139 other firearms, the division shall make rules to extend the background checks required under this
140 section to the other firearms.]~~

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

143 ~~[(4)]~~ (2) To establish personal identification and residence in this state for purposes of this
144 part, a dealer shall require any person receiving a firearm to present:

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

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

148 ~~[(5)]~~ (3) A criminal history background check conducted through the National Instant
149 Background Check System is required for the sale of a firearm by a licensed firearm dealer in the

150 state.

151 ~~[(6) Any person, except a dealer, purchasing a firearm from a dealer shall consent in~~
152 ~~writing to a criminal background check, on a form provided by the division. The form shall also~~
153 ~~contain the following information:]~~

154 ~~[(a) the dealer identification number;]~~

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

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

158 ~~[(d) the Social Security number or any other identification number of the person receiving~~
159 ~~the firearm.]~~

160 ~~[(7) (a) The dealer shall send the form required by Subsection (6) to the division~~
161 ~~immediately upon its completion.]~~

162 ~~[(b) No dealer shall sell or transfer any firearm to any person until the dealer has provided~~
163 ~~the division with the information in Subsection (6) and has received approval from the division~~
164 ~~under Subsection (9).]~~

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

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

170 ~~[(a) review the criminal history files, including juvenile court records, to determine if the~~
171 ~~person is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;]~~

172 ~~[(b) inform the dealer that:]~~

173 ~~[(i) the records indicate the person is so prohibited; or]~~

174 ~~[(ii) the person is approved for purchasing, possessing, or transferring a firearm;]~~

175 ~~[(c) provide the dealer with a unique transaction number for that inquiry; and]~~

176 ~~[(d) provide a response to the requesting dealer during the call for a criminal background,~~
177 ~~or by return call, or other electronic means, without delay, except in case of electronic failure or~~
178 ~~other circumstances beyond the control of the division, the division shall advise the dealer of the~~
179 ~~reason for the delay and give the dealer an estimate of the length of the delay.]~~

180 ~~[(10) The division shall not maintain any records of the criminal history background check~~

181 longer than 20 days from the date of the dealer's request if the division determines that the person
182 receiving the gun is not prohibited from purchasing, possessing, or transferring the firearm under
183 state or federal law. However, the division shall maintain a log of requests containing the dealer's
184 federal firearms number, the transaction number, and the transaction date for a period of 12
185 months.]

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

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

193 [(13) The division shall make rules as provided in Title 63, Chapter 46a, Utah
194 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records
195 provided by the division pursuant to this part are in conformance with the requirements of the
196 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).]

197 [(14) (a) All dealers shall collect a criminal history background check fee which is \$7.50.
198 This fee remains in effect until changed by the division through the process under Section
199 63-38-3.2.]

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

204 [(15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part
205 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee
206 required in this section for the purchase of a firearm if:]

207 [(a) the person presents his concealed firearm permit to the dealer prior to purchase of the
208 firearm; and]

209 [(b) the dealer verifies with the division that the person's concealed firearm permit is
210 valid.]

211 Section 4. Section **76-10-527** is amended to read:

212 **76-10-527. Penalties.**

213 ~~[(1) This section shall apply only to a handgun until federal law requires the background~~
214 ~~check in Section 76-10-526 to extend to other firearms at which time this section shall also apply~~
215 ~~to those firearms.]~~

216 ~~[(2) A dealer is guilty of a class A misdemeanor who willfully and intentionally:]~~

217 ~~[(a) requests, obtains, or seeks to obtain criminal history background information under~~
218 ~~false pretenses; or]~~

219 ~~[(b) disseminates criminal history background information.]~~

220 ~~[(3) A person who purchases or transfers a firearm is guilty of a felony of the third degree~~
221 ~~who willfully and intentionally makes a false statement of the information required for a criminal~~
222 ~~background check in Section 76-10-526.]~~

223 ~~[(4)]~~ (1) A dealer is guilty of a felony of the third degree if the dealer willfully and
224 intentionally sells or transfers a firearm in violation of this part.

225 ~~[(5)]~~ (2) A person is guilty of a felony of the third degree who purchases a firearm with
226 the intent to:

227 (a) resell or otherwise provide a firearm to any person who is ineligible to purchase or
228 receive from a dealer a firearm; or

229 (b) transport a firearm out of this state to be resold to an ineligible person.

230 Section 5. Section **78-3a-206** is amended to read:

231 **78-3a-206. Court records -- Inspection.**

232 (1) The court and the probation department shall keep records as required by the board and
233 the presiding judge.

234 (2) Court records shall be open to inspection by:

235 (a) the parents or guardian, other parties in the case, the attorneys, and agencies to which
236 custody of a minor has been transferred;

237 (b) for information relating to adult offenders alleged to have committed a sexual offense,
238 a felony or class A misdemeanor drug offense, or an offense against the person under Title 76,
239 Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating
240 whether an individual should be permitted to obtain or retain a license as an educator or serve as
241 an employee or volunteer in a school, with the understanding that the office must provide the
242 individual with an opportunity to respond to any information gathered from its inspection of the

243 records before it makes a decision concerning licensure or employment;

244 (c) the Division of Criminal Investigations and Technical Services, established in Section
245 53-10-103, for the purpose of [~~a criminal history background check for the purchase of a firearm~~
246 ~~and~~] establishing good character for issuance of a concealed firearm permit as provided in Section
247 53-5-704; and

248 (d) the Division of Child and Family Services for the purpose of Child Protective Services
249 Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative
250 hearings in accordance with Section 62A-4a-116.5.

251 (3) With the consent of the judge, court records may be inspected by the minor, by persons
252 having a legitimate interest in the proceedings, and by persons conducting pertinent research
253 studies.

254 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
255 would be a felony if committed by an adult, the court shall make available to any person upon
256 request the petition, any adjudication or disposition orders, and the delinquency history summary
257 of the minor charged unless the records are closed by the court upon findings on the record for
258 good cause.

259 (5) Probation officers' records and reports of social and clinical studies are not open to
260 inspection, except by consent of the court, given under rules adopted by the board.

261 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
262 history summary of any person charged as an adult with a felony offense shall be made available
263 to any person upon request.

264 (b) This provision does not apply to records that have been destroyed or expunged in
265 accordance with court rules.

266 (c) The court may charge a reasonable fee to cover the costs associated with retrieving a
267 requested record that has been archived.

268 **Section 6. Effective date.**

269 This act takes effect on July 1, 2002.

270