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1994

An Act

HOUSE BILL 94-1276

BY REPRESENTATIVES Owen, Agler, Anderson, Chlouber, Martin, Hagedorn, Jerke, and Lawrence;
also SENATORS Rizzuto, Cassidy, Johnson, Norton, and Ruddick.

CONCERNING A STATEWIDE INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IN CONNECTION WITH THE TRANSFER OF HANDGUNS IN THIS STATE, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 26.5

Handguns - Statewide Instant Criminal Background Check System

12-26.5-101. **Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "INSTANT CRIMINAL BACKGROUND CHECK SYSTEM ACT".

12-26.5-102. **Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BUREAU" MEANS THE COLORADO BUREAU OF INVESTIGATION IN THE DEPARTMENT OF PUBLIC SAFETY AND CREATED PURSUANT TO ARTICLE 33.5 OF TITLE 24, C.R.S.

(2) "HANDGUN" MEANS:

(a) A FIREARM THAT HAS A SHORT STOCK AND IS DESIGNED TO BE HELD AND FIRED BY THE USE OF A SINGLE HAND; AND

(b) ANY COMBINATION OF PARTS FROM WHICH SUCH FIREARM CAN

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

BE ASSEMBLED.

(3) "FIREARM" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "GUN CONTROL ACT OF 1968", 18 U.S.C. SEC. 921.

(4) "LICENSED COLLECTOR" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "GUN CONTROL ACT OF 1968", 18 U.S.C. SEC. 921.

(5) "TRANSFER" MEANS THE SALE OR DELIVERY OF ANY HANDGUN IN THIS STATE BY A TRANSFEROR, AS SUCH TERM IS DEFINED IN SUBSECTION (7) OF THIS SECTION, TO A TRANSFEREE, AS SUCH TERM IS DEFINED IN SUBSECTION (6) OF THIS SECTION.

(6) "TRANSFEREE" MEANS ANY PERSON TO WHOM A TRANSFEROR, AS SUCH TERM IS DEFINED IN SUBSECTION (7) OF THIS SECTION, WISHES TO SELL OR DELIVER A HANDGUN.

(7) "TRANSFEROR" MEANS ANY FIREARM IMPORTER, MANUFACTURER, OR DEALER WHO IS LICENSED BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, IN ACCORDANCE WITH THE FEDERAL "GUN CONTROL ACT OF 1968" AND IS ENGAGED IN THE TRANSFER OF HANDGUNS IN THIS STATE.

12-26.5-103. Transfer of handguns - duty of transferors - collection of fee - duty of bureau. (1) ON AND AFTER FEBRUARY 28, 1994, A TRANSFEROR SHALL NOT TRANSFER A HANDGUN TO ANY PERSON WHO:

(a) IS PROHIBITED UNDER LOCAL, STATE, OR FEDERAL LAW FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN;

(b) HAS BEEN CONVICTED OF ANY OF THE CRIMES DESCRIBED IN SUBPARAGRAPHS (I) TO (VIII) OF THIS PARAGRAPH (b), INVOLVING THE USE OF FORCE AGAINST A SPOUSE, A FORMER SPOUSE, OR A CHILD:

(I) FIRST DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-202, C.R.S.;

(II) SECOND DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-203, C.R.S.;

(III) THIRD DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-204, C.R.S.;

(IV) FIRST DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402, C.R.S.;

(V) SECOND DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-403, C.R.S.;

(VI) THIRD DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-404, C.R.S.;

(VII) SEXUAL ASSAULT ON A CHILD, AS DESCRIBED IN SECTION 18-3-405, C.R.S.;

(VIII) CHILD ABUSE, AS DESCRIBED IN SECTION 18-6-401, C.R.S.;

(c) IS SUBJECT TO A RESTRAINING ORDER TO PREVENT DOMESTIC ABUSE ISSUED PURSUANT TO SECTIONS 14-4-102 OR 14-4-103, C.R.S., OR IS SUBJECT TO A RESTRAINING ORDER ISSUED PURSUANT TO SECTION 18-1-1001, C.R.S., IN CONNECTION WITH CHARGES BROUGHT AGAINST THE TRANSFEREE FOR ANY OF THE CRIMES DESCRIBED IN SUBPARAGRAPHS (I) TO (VIII) OF PARAGRAPH (b) OF THIS SUBSECTION (1).

(1.5) FOR THE PURPOSES OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, "CONVICTION" MEANS A PLEA OF GUILTY, OR A VERDICT OF GUILTY BY A JUDGE OR JURY, AND INCLUDES A PLEA OF NO CONTEST ACCEPTED BY THE COURT.

(2) ON AND AFTER FEBRUARY 28, 1994, A TRANSFEROR SHALL NOT TRANSFER A HANDGUN TO ANY PERSON, OTHER THAN ANOTHER TRANSFEROR OR LICENSED COLLECTOR, UNTIL THE TRANSFEROR COMPLETES EACH OF THE FOLLOWING:

(a) PROVIDES TO AND OBTAINS FROM THE TRANSFEREE A FORM ADOPTED BY THE BUREAU WHICH REQUESTS INFORMATION FROM THE TRANSFEREE INCLUDING, BUT NOT LIMITED TO, THE TRANSFEREE'S NAME, DATE OF BIRTH, GENDER, RACE, AND SOCIAL SECURITY NUMBER OR OTHER ACCEPTABLE IDENTIFICATION NUMBER;

(b) INSPECTS PROPER IDENTIFICATION OF THE TRANSFEREE. A DEFINITION OF PROPER IDENTIFICATION SHALL BE DETERMINED BY THE BUREAU. SUCH IDENTIFICATION MAY INCLUDE A FORM CONTAINING A PHOTOGRAPH OF THE TRANSFEREE;

(c) COLLECTS A FEE FROM THE TRANSFEREE FOR THE PURPOSE OF PROCESSING THE CRIMINAL HISTORY INSTANT CHECK OF THE TRANSFEREE IN ACCORDANCE WITH SECTION 12-26.5-104. THE BUREAU SHALL ESTABLISH THE FEE IN ACCORDANCE WITH SECTION 12-26.5-107.

(d) (I) (A) REQUESTS THE BUREAU TO CONDUCT AN INSTANT CHECK OF ANY INFORMATION CONCERNING THE TRANSFEREE THAT HAS BEEN REPORTED AND IS REFLECTED IN THE BUREAU'S COMPUTERIZED DATA BASE SYSTEM AS OF THE DATE OF THE REQUEST; AND

(B) RECEIVES A UNIQUE APPROVAL NUMBER FOR THE INQUIRY FROM THE BUREAU AND RECORDS THE DATE AND THE APPROVAL NUMBER ON THE FORM COMPLETED BY THE TRANSFEREE.

(II) THE REQUEST MADE BY THE TRANSFEROR TO THE BUREAU IN ACCORDANCE WITH SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) SHALL BE MADE BY MEANS OF A TOLL-FREE TELEPHONE CALL.

(3) (a) A TRANSFEROR IS NOT REQUIRED TO COMPLY WITH SUBPARAGRAPH (II) OF PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION WHEN:

(I) TELEPHONE SERVICES ARE INTERRUPTED DUE TO A HURRICANE, TORNADO, FLOOD, OR OTHER NATURAL DISASTER, WAR, INVASION, INSURRECTION, RIOT, OR OTHER BONA FIDE EMERGENCY;

(II) TELEPHONE SERVICES ARE UNAVAILABLE DUE TO ANY OTHER REASON BEYOND THE CONTROL OF THE TRANSFEROR.

(b) UNDER THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3), A TRANSFEROR SHALL NOT TRANSFER A HANDGUN FOR THIRTY HOURS OR UNTIL TELEPHONE SERVICE IS AVAILABLE, WHICHEVER OCCURS SOONER. A TRANSFEROR SHALL COMPLETE A BUREAU FORM CONCERNING A SALE MADE PURSUANT TO THIS PARAGRAPH (b) AND SHALL SUBMIT A REPORT TO THE BUREAU WITHIN TWENTY-FOUR HOURS.

(4) IF A PERSON IS DENIED AN APPROVAL NUMBER TO PURCHASE, RECEIVE, OR POSSESS A HANDGUN AS A RESULT OF THE PROCEDURES SET FORTH IN SECTION 12-26.5-104, THE TRANSFEROR SHALL PROVIDE THE TRANSFEREE WITH WRITTEN INFORMATION PREPARED BY THE BUREAU, IN ACCORDANCE WITH SECTION 12-26.5-104 (9), CONCERNING THE PROCEDURE BY WHICH THE TRANSFEREE MAY REQUEST A REVIEW OF THE BUREAU'S DECISION AND A REVIEW OF THE CRIMINAL HISTORY RECORDS.

12-26.5-104. **Statewide instant criminal background check system - duties of bureau.** (1) THE BUREAU SHALL BE RESPONSIBLE FOR ADMINISTERING A STATEWIDE INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IN CONNECTION WITH THE TRANSFER OF HANDGUNS IN THIS STATE.

(2) (a) UPON RECEIPT OF A REQUEST FOR A CRIMINAL HISTORY RECORD CHECK FROM A TRANSFEROR IN ACCORDANCE WITH SECTION 12-26.5-103 (2) (d), THE BUREAU, DURING THE TRANSFEROR'S CALL OR WITHIN TWENTY-FOUR HOURS IF SUBSECTION (4) OF THIS SECTION APPLIES, SHALL REVIEW ITS CRIMINAL HISTORY RECORDS TO DETERMINE IF THE TRANSFEREE:

(I) IS PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN UNDER LOCAL, STATE, OR FEDERAL LAW;

(II) HAS BEEN ARRESTED FOR OR CHARGED WITH A CRIME FOR WHICH THE TRANSFEREE, IF CONVICTED, WOULD BE PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN;

(III) IS THE SUBJECT OF AN INFORMATION OR A FELONY COMPLAINT ALLEGING THAT THE TRANSFEREE HAS COMMITTED A CRIME PUNISHABLE BY IMPRISONMENT FOR A TERM THAT EXCEEDS ONE YEAR;

(IV) HAS BEEN CONVICTED OF ANY OF THE CRIMES DESCRIBED IN SUB-SUBPARAGRAPHS (A) TO (H) OF THIS SUBPARAGRAPH (IV), INVOLVING THE USE OF FORCE AGAINST A SPOUSE, A FORMER SPOUSE, OR A CHILD:

(A) FIRST DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-202, C.R.S.;

(B) SECOND DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-203, C.R.S.;

(C) THIRD DEGREE ASSAULT, AS DESCRIBED IN SECTION 18-3-204, C.R.S.;

(D) FIRST DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-402, C.R.S.;

(E) SECOND DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-403, C.R.S.;

(F) THIRD DEGREE SEXUAL ASSAULT, AS DESCRIBED IN SECTION 18-3-404, C.R.S.;

(G) SEXUAL ASSAULT ON A CHILD, AS DESCRIBED IN SECTION 18-3-405, C.R.S.;

(H) CHILD ABUSE, AS DESCRIBED IN SECTION 18-6-401, C.R.S.;

(V) IS SUBJECT TO A RESTRAINING ORDER TO PREVENT DOMESTIC ABUSE ISSUED PURSUANT TO SECTIONS 14-4-102 OR 14-4-103, C.R.S., OR IS SUBJECT TO A RESTRAINING ORDER ISSUED PURSUANT TO SECTION 18-1-1001, C.R.S., IN CONNECTION WITH CHARGES BROUGHT AGAINST THE TRANSFEREE FOR ANY OF THE CRIMES DESCRIBED IN SUB-SUBPARAGRAPHS (A) TO (H) OF SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a).

(a.5) FOR THE PURPOSES OF SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (2), "CONVICTION" MEANS A PLEA OF GUILTY, OR A VERDICT OF GUILTY BY A JUDGE OR JURY, AND INCLUDES A PLEA OF NO CONTEST ACCEPTED BY THE COURT.

(b) THE BUREAU SHALL DETERMINE AS QUICKLY AS POSSIBLE WHETHER THE TRANSFEREE IS PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN.

(3) (a) (I) IF A REVIEW IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION INDICATES THAT ANY OF THE ITEMS DESCRIBED IN THAT PARAGRAPH APPLY TO THE TRANSFEREE, THE BUREAU SHALL PROVIDE A NONAPPROVAL NUMBER TO THE TRANSFEROR.

(II) IF THE BUREAU ISSUES A NONAPPROVAL NUMBER ON THE BASIS OF A RECORD THAT DOES NOT INCLUDE DISPOSITIONAL INFORMATION, THE TRANSFEREE MAY SEEK REVIEW OF THE BUREAU'S DETERMINATION IN ACCORDANCE WITH SUBSECTION (9) OF THIS SECTION.

(b) IF A REVIEW IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION INDICATES THAT NONE OF THE ITEMS DESCRIBED IN THAT PARAGRAPH APPLY TO THE TRANSFEREE, THE BUREAU

SHALL PROVIDE AN APPROVAL NUMBER TO THE TRANSFEROR.

(4) IN THE EVENT OF ANY SCHEDULED COMPUTER DOWNTIME, ELECTRONIC FAILURE, OR SIMILAR PROBLEM THAT DELAYS THE BUREAU'S ABILITY TO RESPOND DURING A TRANSFEROR'S PHONE CALL, THE BUREAU SHALL IMMEDIATELY NOTIFY THE TRANSFEROR OF THE REASON FOR AND ESTIMATED LENGTH OF ANY DELAY. AFTER PROVIDING SUCH NOTIFICATION, THE BUREAU SHALL, AS SOON AS POSSIBLE BUT AT LEAST WITHIN TWENTY-FOUR HOURS, EITHER INFORM THE TRANSFEROR THAT ITS RECORDS DEMONSTRATE THAT THE TRANSFEREE IS PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN UNDER SECTION 12-26.5-103 (1) OR PROVIDE THE TRANSFEROR WITH A UNIQUE APPROVAL NUMBER.

(5) UNLESS NOTIFIED WITHIN TWENTY-FOUR HOURS THAT THE TRANSFER IS PROHIBITED, AND WITHOUT REGARD AS TO WHETHER THE BUREAU HAS PROVIDED A UNIQUE APPROVAL NUMBER, THE TRANSFEROR MAY COMPLETE THE TRANSFER AND SHALL NOT BE DEEMED IN VIOLATION OF THIS ARTICLE.

(6) (a) ANY RECORDS CONTAINING ANY OF THE INFORMATION SET FORTH IN SECTION 12-26.5-103 (2) (a) PERTAINING TO A TRANSFEREE WHO THE BUREAU DETERMINES IS NOT PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN UNDER LOCAL, STATE, OR FEDERAL LAW, WHICH RECORDS ARE CREATED OR MAINTAINED BY THE BUREAU TO CONDUCT THE CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS ARTICLE, SHALL BE CONFIDENTIAL, AND THE BUREAU AND ALL OF ITS EMPLOYEES OR AGENTS SHALL NOT DISCLOSE ANY INFORMATION CONTAINED THEREIN TO ANY PERSON OR TO ANOTHER AGENCY.

(b) THE BUREAU SHALL DESTROY ANY RECORD CREATED OR OBTAINED FOR THE PURPOSES OF THIS ARTICLE AS SOON AS POSSIBLE AFTER THE BUREAU COMMUNICATES AN APPROVAL NUMBER TO THE TRANSFEROR. THE BUREAU SHALL NOT RETAIN A RECORD FOR MORE THAN FORTY-EIGHT HOURS AFTER THE DAY ON WHICH THE BUREAU APPROVES THE TRANSFEROR'S REQUEST.

(c) THE BUREAU MAY MAINTAIN RECORDS OF THE NATIONAL CRIME INFORMATION CENTER TRANSACTIONS TO THE EXTENT REQUIRED BY FEDERAL LAW AND MAY MAINTAIN A LOG OF DATES OF REQUESTS FOR CRIMINAL HISTORY RECORDS CHECKS, UNIQUE APPROVAL AND NONAPPROVAL NUMBERS, LICENSE IDENTIFICATION NUMBERS, AND TRANSACTION NUMBERS CORRESPONDING TO SUCH DATES FOR A PERIOD OF NO MORE THAN TWO YEARS UNLESS OTHERWISE PROHIBITED BY FEDERAL LAW, IN WHICH CASE THE BUREAU MAY MAINTAIN RECORDS ONLY FOR SO LONG AS PERMITTED UNDER FEDERAL LAW.

(d) EXCEPT AS OTHERWISE PROVIDED BY PARAGRAPH (e) OF THIS SUBSECTION (6), IF AN APPLICANT IS DENIED AN APPROVAL NUMBER TO PURCHASE, RECEIVE, OR POSSESS A HANDGUN AS A RESULT OF ANY INFORMATION OBTAINED PURSUANT TO THE CRIMINAL BACKGROUND CHECK SYSTEM, SUCH INFORMATION SHALL NOT BE USED AGAINST THAT INDIVIDUAL FOR ANY OTHER PURPOSES, INCLUDING BUT NOT LIMITED TO THE DENIAL

OF EMPLOYMENT OPPORTUNITIES.

(e) IF THE BUREAU PROVIDES A TRANSFEROR WITH A NON-APPROVAL NUMBER FOR A TRANSFEREE, THE BUREAU SHALL IMMEDIATELY NOTIFY THE LOCAL LAW ENFORCEMENT AGENCY WHERE THE TRANSFEREE RESIDES AND THE LOCAL LAW ENFORCEMENT AGENCY OF THE TRANSFEROR'S PLACE OF BUSINESS OF THE NON-APPROVAL NUMBER. IN ADDITION, THE BUREAU SHALL PROVIDE THE LAW ENFORCEMENT AGENCIES WITH ANY CRIMINAL BACKGROUND INFORMATION AND ANY INFORMATION PROVIDED BY THE TRANSFEROR CONCERNING THE TRANSFEREE.

(7) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ALLOW THE BUREAU TO MAINTAIN RECORDS CONTAINING THE NAMES OF PURCHASERS OR TRANSFEREES WHO RECEIVE UNIQUE APPROVAL NUMBERS OR TO MAINTAIN RECORDS OF FIREARM TRANSACTIONS.

(8) THE BUREAU SHALL PROVIDE A TOLL-FREE TELEPHONE NUMBER THAT IS OPERATIONAL EVERY DAY OF THE WEEK, TWELVE HOURS A DAY, FOR THE PURPOSE OF RESPONDING TO REQUESTS FROM TRANSFERORS IN ACCORDANCE WITH THIS SECTION. THE BUREAU SHALL EMPLOY AND TRAIN SUCH PERSONNEL AS ARE NECESSARY TO ADMINISTER THE PROVISIONS OF THIS SECTION.

(9) (a) ANY PERSON WHO IS DENIED AN APPROVAL NUMBER TO PURCHASE, RECEIVE, OR POSSESS A HANDGUN AS A RESULT OF THE PROCEDURES ESTABLISHED BY THIS SECTION MAY REQUEST A REVIEW OF THE BUREAU'S DECISION AND A CRIMINAL HISTORY RECORDS REVIEW IN ACCORDANCE WITH THE RULES ADOPTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY. THE EXECUTIVE DIRECTOR SHALL INCLUDE A RULE THAT REQUIRES THE BUREAU TO PREPARE WRITTEN INSTRUCTIONS FOR THE REVIEW, WHICH INSTRUCTIONS SHALL BE PROVIDED TO THE TRANSFEREE BY THE TRANSFEROR IN ACCORDANCE WITH SECTION 12-26.5-103 (4).

(b) WHEN DISPOSITIONAL INFORMATION INDICATING A TRANSFEREE IS NOT PROHIBITED FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN IS NOT INCLUDED IN THE BUREAU'S RECORDS, IT IS THE TRANSFEREE'S RESPONSIBILITY TO OBTAIN AND PROVIDE THE DISPOSITIONAL INFORMATION TO THE BUREAU BEFORE THE BUREAU MAY RELEASE AN APPROVAL NUMBER TO THE TRANSFEROR.

(10) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY SHALL ADOPT RULES TO ENSURE THE PROPER MAINTENANCE, CONFIDENTIALITY, AND SECURITY OF ALL RECORDS AND DATA PROVIDED PURSUANT TO THIS ARTICLE. THE EXECUTIVE DIRECTOR SHALL FOLLOW THE RECOMMENDATIONS MADE BY THE DIRECTOR OF THE BUREAU IN ADOPTING RULES PURSUANT TO THIS SECTION.

12-26.5-105. Unlawful act - criminal and civil penalties - immunities. (1) IT IS UNLAWFUL FOR:

(a) ANY TRANSFEREE TO WILLFULLY AND KNOWINGLY PROVIDE FALSE

INFORMATION OR FALSE OR FRAUDULENT IDENTIFICATION IN CONNECTION WITH A TRANSFER MADE PURSUANT TO THIS ARTICLE;

(b) ANY TRANSFEROR, OR EMPLOYEE OR AGENT OF A TRANSFEROR, TO VIOLATE THE PROVISIONS OF THIS ARTICLE;

(c) ANY PERSON TO KNOWINGLY ACQUIRE A HANDGUN FOR A PERSON WHO IS PROHIBITED BY LOCAL, STATE, OR FEDERAL LAW FROM PURCHASING, RECEIVING, OR POSSESSING A HANDGUN;

(d) ANY TRANSFEROR TO REQUEST CRIMINAL HISTORY RECORD INFORMATION UNDER FALSE PRETENSES OR TO WILLFULLY AND INTENTIONALLY DISSEMINATE CRIMINAL HISTORY RECORD INFORMATION TO ANY PERSON OTHER THAN THE SUBJECT OF SUCH INFORMATION;

(e) ANY AGENT OR EMPLOYEE, OR FORMER AGENT OR EMPLOYEE, OF THE BUREAU TO INTENTIONALLY VIOLATE THE PROVISIONS OF THIS ARTICLE.

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

(3) ANY LAW ENFORCEMENT AGENCY, INCLUDING THE BUREAU, THE STATE JUDICIAL DEPARTMENT, OR ANY COURT OF THIS STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, THAT ACTS IN GOOD FAITH IN COMPLYING WITH THE PROVISIONS OF THIS ARTICLE OR ANY EMPLOYEE OR AGENT OF SUCH ENTITIES WHO ACTS IN GOOD FAITH IN COMPLYING WITH THE PROVISIONS OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION THEREFOR.

(4) ANY TRANSFEROR WHO COMPLIES WITH THE PROVISIONS OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY CIVIL OR CRIMINAL LIABILITY OR REGULATORY SANCTION THEREFOR.

12-26.5-106. **Persons exempt as transferees - transferors.** (1) THE PROVISIONS OF THIS ARTICLE THAT APPLY TO TRANSFERORS OR TRANSFEREES SHALL NOT APPLY TO:

(a) ANY LOCAL, STATE, OR FEDERAL LAW ENFORCEMENT OFFICER OR AGENT, WHEN THE TRANSFER IS MADE TO THE OFFICER OR AGENT FOR OFFICIAL LAW ENFORCEMENT PURPOSES;

(b) ANY LICENSED COLLECTOR.

12-26.5-107. **Fees - fines - collection - cash fund created - allocation of moneys from fund.** (1) THE DIRECTOR OF THE BUREAU SHALL ESTABLISH A FEE TO BE CHARGED TO A TRANSFEROR EACH TIME THE TRANSFEROR MAKES A REQUEST USING THE STATEWIDE INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IN ACCORDANCE WITH SECTION 12-26.5-103. THE TRANSFEROR SHALL COLLECT THE FEE FROM THE TRANSFEREE IN ACCORDANCE WITH SECTION 12-26.5-103 (2) (c). THE DIRECTOR SHALL

ESTABLISH A FEE THAT IS SUFFICIENT TO COVER THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS ARTICLE.

(2) ANY FEE COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION OR ANY FINE COLLECTED PURSUANT TO SECTION 12-26.5-105 (3) SHALL BE TRANSMITTED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE STATEWIDE INSTANT CRIMINAL BACKGROUND CHECK CASH FUND, REFERRED TO IN THIS ARTICLE AS THE "FUND", WHICH FUND IS HEREBY CREATED. ANY INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS OF IMPLEMENTING THE PROVISIONS OF THIS ARTICLE.

12-26.5-108. **General assembly's intent to comply with federal law.** (1) IT IS THE GENERAL ASSEMBLY'S INTENT THAT THE PROVISIONS OF THIS ARTICLE BE IMPLEMENTED IN A MANNER THAT IS CONSISTENT WITH THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT", AND ANY FEDERAL RULES ADOPTED PURSUANT TO THE ACT.

(2) IT IS THE GENERAL ASSEMBLY'S FURTHER INTENT THAT THE BUREAU ACT AS THE AUTHORIZED GOVERNMENT OFFICIAL FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE IN ACCORDANCE WITH THE FEDERAL LAW.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ALLOW A TRANSFEROR TO COMPLY WITH THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT" IN ANY MANNER OTHER THAN THAT SET FORTH IN THIS ARTICLE.

12-26.5-109. **Repeal of article.** THIS ARTICLE IS REPEALED EFFECTIVE FEBRUARY 28, 1999, WHICH IS THE DATE OF THE IMPLEMENTATION OF THE FEDERAL NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IN ACCORDANCE WITH THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT", WHICH PROVIDES FOR ACCESS TO NATIONAL CRIMINAL HISTORY INFORMATION AND REQUIRES NATIONAL CRIMINAL HISTORY CHECKS OF TRANSFEREES TO WHOM A FIREARM MAY BE TRANSFERRED.

SECTION 2. 24-33.5-412 (1), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH 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., CONCERNING THE STATEWIDE INSTANT CRIMINAL BACKGROUND CHECK SYSTEM IN CONNECTION WITH THE TRANSFER OF HANDGUNS.

SECTION 3. **Appropriation - loan authorized.** (1) (a) In addition to any other appropriation heretofore made for the current fiscal year, there is hereby appropriated, out of any moneys in the statewide instant criminal background check cash fund created by section 12-26.5-107, Colorado Revised Statutes, not otherwise appropriated, to the department of public safety for allocation to the Colorado bureau of investigation, the sum of one hundred five thousand six hundred sixty-nine dollars ($105,669) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(b) For the purpose of implementing this act prior to sufficient moneys becoming available in the statewide instant criminal background check cash fund, the department of public safety is authorized to borrow moneys from the general fund pursuant to section 24-75-203, C.R.S., during the fiscal year beginning July 1, 1993, in an amount up to the amount appropriated in paragraph (a) of this subsection (1). The advanced moneys shall be transferred and credited to the statewide instant criminal background check cash fund. As moneys become available to the cash fund, any moneys borrowed from the general fund shall be repaid from the cash fund, without interest.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the statewide instant criminal background check cash fund created by section 12-26.5-107, Colorado Revised Statutes, not otherwise appropriated, to the department of public safety for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 1994, the sum of one hundred eighty-seven thousand nine hundred eighty-five dollars ($187,985) and 6.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

SECTION 4. Effective date - applicability. This act shall take effect upon passage and shall apply to the sale or delivery of any handgun in this state on or after said date.

SECTION 5. 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.

Charles E. Berry

Charles E. Berry
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Tom Norton

Tom Norton
PRESIDENT OF
THE SENATE

Judith M. Rodrigue

Judith M. Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Joan M. Albi

Joan M. Albi
SECRETARY OF
THE SENATE

APPROVED February 26, 1994 at 10:50 a.m.

Roy Romer

Roy Romer
GOVERNOR OF THE STATE OF COLORADO

The Bureau of Alcohol, Tobacco and Firearms

Brady Handgun Violence Protection Act Questions & Answers

BRADY HANDGUN VIOLENCE PROTECTION ACT QUESTIONS AND ANSWERS

February 28, 1994

1. Q. Who must comply with the 5-day waiting period requirement imposed by the Brady Act?

A. Federally licensed firearms importers, manufacturers, and dealers must comply with the requirement prior to the sale, transfer, or delivery of a handgun to a nonlicensed individual.

2. Q. How does the Brady Act affect a Federal firearms licensee?

A. The waiting period provisions of the law make it unlawful for any Federal firearms licensee to sell a handgun to a nonlicensee unless the licensee:

(1) obtains a statement from the purchaser (Brady form) containing the purchaser's name, address, and date of birth appearing on a valid photo identification, and a statement that the purchaser is not a felon, under indictment, or otherwise prohibited from receiving or possessing the firearm under the law;

(2) verifies the identity of the transferee by examining an identification document presented;

(3) within 1 day after the purchaser furnishes the statement, contacts (by telephone or otherwise) the chief law enforcement officer (CLEO) of the place of the residence of the purchaser and advises such officer of the contents of the statement;

(4) within 1 day after the purchaser furnishes the statement, provides to the chief law enforcement officer of the place of residence of the purchaser a copy of the statement and the officer makes a reasonable effort to determine whether the purchaser is prohibited from possessing the particular handgun(s) sought to be purchased; and

(5) the licensee waits 5 business days from the date the licensee furnished notice of the contents of the statement before transferring the handgun to the purchaser (during which period the licensee has not received information from the chief Law enforcement officer that possession of the handgun by the purchaser (2)

would be in violation of the law) OR the licensee receives notice from the chief law enforcement officer of the place of the residence of the purchaser that possession of the handgun by the purchaser does not violate the law.

3. Q. Does the 5-day waiting period requirement apply to sales of handguns to Law Enforcement?

A. No. These sales are exempt. However, the dealer should obtain from the purchaser a certification from the purchaser's commanding officer stating that the handgun is being acquired for official use.

4. Q. What is the effective date of the Brady Act?

4. Q. What is the effective date of the Brady Act?

A. The waiting period provisions of the law are effective on February 28, 1994 and cease on November 30, 1998. However, the provisions dealing with the increase in license fees, multiple sales reports, transport of firearms by common carriers, and thefts of firearms from a Federal firearms licensee are permanent and were effective on November 30, 1993.

5. Q. Are there any exceptions to the 5-day waiting period requirement?

A. Licensees need not comply with the waiting period requirements in 4 situations. These include handgun transfers (a) pursuant to an offical's written statement of the buyer's need for a handgun based upon a threat to life; (b) to buyers having a State permit or whose records have been checked and in either case an official has verified eligibility to possess firearms; (c) of National Firearms Act weapons approved by ATF; and (d) certified by ATF as exempt because compliance with the waiting period is impractical.

6. Q. Must a dealer wait 5 days before transferring the handgun to the buyer?

A. No, if the dealer has received notice from the chief law enforcement officer within the 5 business days that the officer has no information indicating that the buyer's receipt or possession of the handgun would violate the law.

7. Q. When does the 5-day waiting period begin to run?

A. At the time the licensee provides notice to the CLEO.

8. Q. Does the Brady Act apply to licensed collectors?

A. No, except if they purchase other than a curio or relic handgun. In that event they would have to

provide the licensed dealer with a Brady form.

9. Q. Why can't the Brady form contain information such as P.O.B., gender, race, SS#, etc.?

A. Because it is restricted to only 5 areas that are specifically referenced under the new law. ATF is offering the buyer the option to place this information on the Brady form.

10. Q. How much checking does the CLEO have to do?

A. The CLEO must conduct a check that involves a reasonable effort to determine whether Federal, State, or local law would prohibit receipt by the transferee. For example, checking NCIC, wanted persons, and triple III.

11. Q. Does the CLEO have to respond to the licensee?

A. No, the law does not specifically require a response either way. However, if the CLEO fails to respond on prohibited buyers, the officer would not be preventing the sale from occurring.

12. Q. What is a "handgun" for purposes of the Brady Act?

A. The term "handgun" means (a) a firearm which has a short stock and is designed to be held and fired by the use of a single hand and (b) any combination of parts from which a firearm described by (a) can be assembled. 13. Q. Is the dealer required by the Brady Act to obtain and retain a copy of the Brady form?

A. Yes.

14. Q. Does the CLEO have to maintain any records?

A. No. Within 20 days after the date the Brady form was signed and dated by the purchaser, the CLEO must destroy all records except those that involved prohibited buyers.

15. Q. Does a licensed collector selling a curio of relic handgun have to obtain a Brady form?

A. No. Collectors' sales of handguns are not subject to the waiting period requirement. However, a licensed collector would be subject to the requirements of the Brady law if purchasing other than a curio or relic handgun from a licensed dealer.

16. Q. What is the penalty for a buyer's falsification of the Brady form?

A. A felony offense under 18 U.S.C. 922(a)(6), 924(a)(1)(A).

17. Q. What is the penalty for the failure of a FFL to obtain the Brady form?

A. Whoever knowingly violates these provisions shall be subject to a fine of not more than $100,000, imprisonment for not more than one year, or both.

18. Q. Were there any provisions under the Brady Act other than the 5-day waiting period?

A. Yes. The Act contains provisions dealing with multiple sales reports, transport of firearms by common carriers, thefts of firearms from Federal firearms licensees, and an increase in the license fee for dealers in firearms.

19. Q. What is the change regarding the multiple sales report?

A. In addition to furnishing multiple sales reports to ATF, licensees are required to submit such reports to the "department of State police or State law enforcement agency of the State or local law enforcement agency of the jurisdiction in which the sale or other disposition took place."

20. Q. Can the CLEO or other law enforcement official maintain a file of Reports of Multiple Sales received from a licensee?

A. No. The law prohibits keeping records more than 20 days after the date the form is received by the CLEO. Exceptions would be for those forms involving prohibited persons.

21. Q. Will current Federal firearms dealers (including pawnbrokers) have to pay an additional fee to maintain their license?

A. Upon the next renewal of their license they will be required to pay a $90 fee for a 3-year period.

22. Q. Does the new law on common and contract carriers require that intrastate carriers obtain written acknowledgement of delivery of firearms?

A. Yes, if the carrier delivers firearms which are being shipped interstate.

23. Q. What is the penalty for theft of a firearm from the person or premises of a licensed dealer?

A. As provided by 18 U.S.C. 924(i)(1) - $250,000 fine, 10 years imprisonment, or both.

24. Q. A licensed firearms dealer attends a gunshow in a town distant from his licensed premises and meets a prospective customer who is interested in acquiring a handgun. However, because the handgun may not be delivered until the 5-day waiting period has elapsed, the dealer finds that he will be unable to meet with

the customer and deliver the handgun after the period expires. May the dealer transfer the handgun to the gunshow promoter for delivery to the purchaser at the end of the 5-day waiting period?

A. No. Assuming the gunshow promoter is unlicensed, the transfer of a handgun between the dealer and the promoter would be subject to the requirements of Brady. Thus, the transfer between the dealer and promoter could not be made without completion of ATF F 5300.35 and compliance with the 5-day waiting period.

25. Q. Dealer A attends a gunshow in a town distant from his licensed premises, but in the same state in which his licensed premises is located, and meets a prospective customer who is interested in acquiring a handgun. May Dealer A transfer the handgun to Dealer B for delivery to the purchaser at the end of the 5-day waiting period?

A. Yes. Transfers of handguns between licensees are not subject to the requirements of Brady. Dealer A could transfer the handgun to Dealer B, and Dealer B could then have the purchaser complete ATF Form 5300.35. After Dealer B has complied with the Brady requirements and 5 business days have elapsed, Dealer B could

deliver the handgun to the purchaser, assuming the other requirements of the law have been satisfied. In addition, Dealer B should obtain an executed ATF Form 4473 from the purchaser at the time of delivery.

26. Q. What evidence is required for a CLEO to advise a licensee not to sell a handgun to an individual?

A. The GCA makes it unlawful for an FFL to transfer a handgun if the FFL has reasonable cause to believe the buyer is prohibited from receiving or possessing the handgun under Federal, State, or local law. The same standard applies to notifications by CLEOs under Brady. Thus, if a records check results in information that an individual may be prohibited from acquiring a handgun, a CLEO would be justified in reporting to the FFL that there is reasonable cause to believe the buyer is a prohibited person. For example, a records check indicates that a purchaser was arrested for a felony but does not indicate the disposition of the charge. CLEOs should make every reasonable effort to determine a disposition of felony charges. However, if a disposition cannot be determined, the CLEO may notify the FFL that there is reasonable cause to believe the buyer is a prohibited person. If the buyer can provide the CLEO with information establishing that he/she was not under indictment for or convicted of the charge, the CLEO could notify the FFL that the CLEO has withdrawn the objection to the sale.

Any questions CLEOs have concerning the effect under State law of convictions for various offenses, deferred adjudications, pardons, expunctions, etc. should be addressed to State authorities. Unless the particular offenses were charged in Federal court, State law will dictate whether the offenses are disabling. Questions concerning the effect of these events under Federal law should be addressed to the appropriate ATF Assistant Chief Counsel.

27. Q. What is sufficient evidence that an individual is an unlawful user of or addicted to controlled substances so that a CLEO should advise an FFL not to transfer a handgun to the individual?

A. The disability of unlawful use is imposed only upon a present unlawful user of controlled substances. Evidence of such use might, for example, consist of statements of witnesses to such unlawful use, a series of convictions for unlawful possession where possession was of a quantity indicating personal use, a recent

conviction for unlawful possession where the quantity possessed indicated personal use, or medical records showing use of or addiction to controlled substances.

28. Q. What forms of identification must a dealer obtain from a purchaser under Brady?

A. The identification document presented by the purchaser must have a photo of the purchaser, name, address, and date of birth, and must be issued by a governmental entity for the purposes of identification of individuals. Examples of acceptable identification

documents are driver's licenses and passports.

29. Q. If a CLEO will accept notification only by mail, what evidence should the dealer obtain to

29. Q. If a CLEO will accept notification only by mail, what evidence should the dealer obtain to establish the date on which the CLEO received actual notice so he will know when the 5-day waiting period begins?

A. If a CLEO is notified by mail, licensees are required to send the notice by registered or certified mail (return receipt requested) or by any other method of mailing which will provide a written receipt. The date of receipt by the CLEO will be indicated on the return receipt returned to the FFL. The date of receipt will determine when the 5-day waiting period begins.

30. Q. What records should a CLEO check to determine whether the purchaser is prohibited from receiving or possessing firearms due to drug abuse, a dishonorable discharge, or being an illegal alien?

A. Brady requires CLEOs to make a "reasonable effort" to ascertain within 5 business days whether the buyer's receipt or possession of a handgun would be in violation of law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General (NCIC). The law clearly anticipates some minimal effort to check available records. Thus, the CLEO should check every available record system that may contain information relating to the categories of prohibited persons, including drug abusers, individuals dishonorably discharged from the military, and illegal aliens. For example, if centralized mental health records are maintained in the jurisdiction and are accessible by the CLEO, the CLEO should make a

"reasonable effort" to determine whether the individual has been committed to a mental institution. Criminal records systems available to the CLEO may disclose whether the purchaser is possibly an unlawful user of controlled substances or an illegal alien.

It is difficult to prescribe what type of records search is a "reasonable effort" in every instance. The level of research will vary from CLEO to CLEO, depending on the resources available, the personnel available to conduct the searches, and the law enforcement priorities of the CLEO's jurisdiction.

31. Q. When must a purchaser complete ATF F 5300.35? At what point in the transaction is the purchaser required to execute the ATF F 4473?

A. Brady requires that ATF F 5300.35 be completed at the time the buyer expresses an intent to acquire a handgun from a licensee. The firearm need not be in the licensee's inventory as long as the buyer has the intent to acquire a handgun. The instructions on ATF F 4473 provide that the form is to be executed by the transferee at the time of delivery of the firearm. Thus, ATF Form 5300.35 would be executed prior to sale of a handgun and Form 4473 would be executed after the sale is made, at the time of delivery of the handgun.

32. Q. Can a CLEO maintain a data base of handgun purchasers? If so, what kind of information can be maintained in the data base?

A. CLEOs are required to destroy Forms 5300.35 and records containing information derived from the forms within 20 business days after the date the form was executed. However, CLEOs need not destroy forms or information derived from forms if the purchaser is found to be prohibited by law from receiving or possessing a handgun. Thus, the Brady law does not prohibit CLEOs from maintaining a data base of individuals who are prohibited by law from receiving or possessing handguns. 33. Q. Can a dealer maintain a data base of handgun purchasers?

A. Federal law does not preclude a dealer from maintaining a data base of handgun purchasers. However, such a data base would not excuse a dealer from complying with the requirements of Brady for each handgun sale, transfer, or delivery.

34. Q. If a CLEO advises an FFL not to transfer a handgun to an individual, does the individual have any appeal rights?

A. The individual may request the CLEO to provide the reason for the determination. The CLEO is required to provide reasons for the determination in writing within 20 business days after receipt of the request.

The law provides that CLEOs and other persons responsible for providing criminal history background information are not liable for damages for preventing the sale of a handgun to an individual who may lawfully receive or possess a handgun.

35. Q. Brady requires a dealer to wait 5 "business days" before transferring a handgun to a purchaser. What are "business days?"

A. "Business days" are days on which State offices in the State where the dealer's premises is located are open. If State offices are not open on Saturday and Sunday, these days do not count as "business days," even if the CLEO is open on these days.

36. Q. May a CLEO charge licensees a fee for performing a background check? If so, and the licensee refuses to pay the fee, is the CLEO still required to perform the records check?

A. The Brady law does not prohibit the imposition of fees for performing records checks. Such fees would be imposed pursuant to applicable State and local law. If State law prohibits the sale of a handgun unless the fee for the records check is paid, then such a sale could not be made. Under these circumstances a CLEO would have no obligation to perform a records check.

37. Q. Is the redemption of a pawned handgun subject to the requirements of the Brady law? If so, may the pawnbroker obtain an executed Form 5300.35 and comply with the waiting period requirements before the redemption of the handgun so that at the time of redemption the handgun may be returned to the owner without further delay?

A. The transfer of a pawned handgun from the licensed pawnbroker to the owner is subject to the requirements of Brady. The licensee may have the owner of the handgun execute the Form 5300.35 at the time the handgun is pawned or at any time during the redemption (10)

period. Thus, the licensee may comply with the waiting period requirement prior to the redemption of the handgun.

38. Q. A handgun is delivered to a licensee by an unlicensed individual for the purposes of repair. Is the return of the repaired handgun subject to the requirements of the Brady law? Would the transfer of a replacement handgun from the licensee to the owner of the damaged handgun be subject to the requirements of Brady?

A. Neither the transfer of a repaired handgun nor the transfer of a replacement handgun would be subject to the requirements of the Brady law. Completion of ATF F 4473 is also not required. However, the licensee's permanent acquisition and disposition records should reflect the return of the handgun or transfer of a replacement handgun.

39. Q. In light of the Brady law, may a licensee sell, transfer, or deliver a handgun to a nonlicensed individual who does not appear in person at the licensed premises?

A. No. Unless the purchaser appears in person at the licensed premises, the licensee cannot comply with the requirement in the Brady law that the identity of the purchaser be verified by means of a Government-issued identification document containing a photograph.

40. Q. When does the 5-day waiting period begin to run under the Brady law?

A. The 5-day waiting period runs from the time the CLEO receives actual notice of the contents of ATF F 5300.35 not from the time ATF F 5300.35 is received by the CLEO. FFL's are required by regulation to comply with the CLEO's instructions as to the manner in which actual notice must be given.

41. Q. What are the legal implications if a CLEO refuses to do the background check and the dealer sells

a handgun to a prohibited person?

A. The dealer is prohibited from making a sale if he/she has "reasonable cause to believe" that the buyer is a prohibited person. Assuming that the dealer does not have "reasonable cause to believe" that the buyer is

prohibited and the CLEO has not made a reasonable effort to conduct a background check as required by law, the dealer may deliver the handgun after expiration of the 5-day waiting period.

42. Q. If an alien legally in the United States has a letter from his embassy or consulate authorizing him to purchase a firearm, would his purchase of a handgun from a licensed dealer be subject to the Federal 5-day waiting period?

A. The GCA makes it unlawful for a licensee to sell or deliver a handgun to a person who does not reside in the State in which the licensee's business premises is located. An alien legally in the United States having such an embassy or consulate letter is considered a resident of the State in which the embassy or consulate is located and may purchase a firearm from a licensee in that State. If the Federal 5-day waiting period applies to licensees' sales of handguns in that State, the alien's purchase of a handgun from a licensee would be subject to the waiting period.

It should be noted that if State law prohibits the licensee from selling handguns, the letter of an embassy or consulate in that State authorizing the purchase of a firearm would not allow the alien to purchase a handgun. For example, a letter issued by an embassy in the District of Columbia, where the sale of handguns is prohibited, would not permit the alien to buy a handgun.

43. Q. The regulations require that dealers in alternative states with "instant check" systems retain with the Form 4473, a statement showing the date of verification, any identifying number, and the name, location, and title of the Government official who did the check. If the Government official refuses to provide FFLs with their name or any of the other information, will the FFL be in violation of the regulation?

A. FFLs in "instant check" states should request all of the information listed in the regulation. However, if the individual responding to the requested background check refuses to provide the information, the FFL should record all available information and attach it to the Form 4473, including a notation that the individual refused to provide a name, etc.

44. Q. If an individual repeatedly pawns the same firearm, is the FFL required to do a records check each time the firearm is redeemed?

A. The fact that the transferee has redeemed the handgun before does not excuse the licensee from complying with the law. The transferee must obtain an executed Form 5300.35, give notice, and comply with all the other requirements of the law before transferring the handgun to the transferee.

Last updated December 29, 1995

Return to FIREARMS INFORMATION

Return to FIREARMS

Return to HOMEPAGE COVER

Crime-Brady law ~~[illegible]~~ legislation

U.S. Department of Justice

Office of Intergovernmental Affairs

Office of the Director

Washington, D.C. 20530

Jon/Leanne —
I assume Nick sent this to you, but just in case...
Elena

July 10, 1997

MEMORANDUM

TO: Elena Kagan
FROM: Nick Gess
SUBJECT: Brady Act / Halbrook Letter

Elena -- Attached is my draft response to the Halbrook / NRA letter on the Brady Act. I've given it to Beth Nolan & Eldie Acheson. Basically, I want to stay away from being drawn into a battle of each of the 19 states' laws. Rather, I want to cast Brady as a law enforcement investigative method, one which is no different that a wide variety of other law enforcement activities which aren't graven in any statutes.

Enclosures

Stephen P. Halbrook, Esquire
10560 Main Street, Suite 404
Fairfax, Virginia 22030

Dear Mr. Halbrook:

Thank you for your recent letter to the President and the Attorney General concerning law enforcement efforts in support of enforcement of the Brady Handgun Control Act. Your letter suggests a rather novel view of the law, one which bodes ill for law enforcement's ability to protect the American public.

In our criminal justice system, Federal, state and local laws generally authorize law enforcement agencies to enforce the law. With the exception of certain particularly intrusive methods of investigation, Federal and state laws do not generally authorize specific investigative methods. Your analysis seems to suggest that unless there is a state law expressly authorizing law enforcement to conduct interviews or surveillance in support of an investigation, that law enforcement cannot conduct interviews or surveillance in that state. This is, of course, not the case and, if it were, would deal a body blow to the public's safety.

The Brady Handgun Control Act is one of a panoply of authorities which exist in our society to prevent crimes from ocurring in the first place. Just as law enforcement heavily patrols highways and streets with significant incidents of drunk driving fatalities in an effort to prevent further such crimes from ocurring, the Brady Handgun Control Act is designed to permit law enforcement to assure that an individual may lawfully possess a handgun before the handgun transfer takes place.

Just as there are no statutes which specifically authorize enhanced drunk driving patrols, yet law enforcement may, within the limits of the law, conduct such patrols, we find it inconceiveable that for law enforcement to conduct pre-sale background checks, that it must have a specific authorization to do so. Of course, those provisions of the Act which create a five-day delay to permit the check to take place, remain in full force and effect.

Ultimately, we view our request to law enforcement to continue doing what it has done as exactly the sort of good cooperative law enforcement which the public needs to be safe and secure. We do not intend to change our advice because to do so would be legally incorrect and would put the citizens whom we serve at significant risk.

END

the states governing the duties of law enforcement do not encompass voluntary execution of federal law, and law enforcement departments are not authorized to expend funds on volunteer activities not sanctioned by State law. *See, e.g.*, Mont. Code §7-32-2121 (duties of sheriff under State law), §§7-4-2110, 7-4-2203 (board of county commissioners supervise officials charged with the disbursement of public revenues and prosecute delinquencies). All of the other States also define law enforcement duties and prohibit use of funds for purposes unauthorized by State law.

The above limitations apply as much to departments of State police and Attorneys General as to local sheriffs and police chiefs. State officials are not authorized to expend funds for activities not santioned by State law any more than are local officials.

Certainly the Supreme Court's decision does not create a problem so urgent as would justify encouraging local law enforcement officials to violate the laws of their own States. In 1994, federal district courts in Montana, Mississippi, Arizona, Vermont, and Louisiana declared the Brady Act unconstitutional. The Brady Act has been inoperative in Texas, Mississippi, and Louisiana since March 1996, when it was declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). Yet no one has suggested since then that a crisis was forthcoming in those States such as warranted acting outside of and in conflict with State law.

The above points to the necessity of putting on line the permanent provision of the Brady Act, the federal instant check. This task should be accomplished with all deliberate speed. Meanwhile, in urging CLEOs to execute the Brady law voluntarily, we urge you to inform them that you do not warrant that they may lawfully do so under the laws of their respective States, and that you warn them that expenditure of funds for unauthorized execution of federal law may be contrary to State law.

Sincerely,

Stephen P. Halbrook

Stephen P. Halbrook

cc: Honorable Walter Dellinger
Acting Solicitor General
Department of Justice
10th St. and Constitution Ave., N.W.
Washington, D.C. 20530

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JUL 8

June 30, 1997

President Bill Clinton
The White House
Washington, D.C. 20500

Attorney General Janet Reno
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Re: "Voluntary" Background Checks Under Brady Act

Dear President Clinton and Attorney General Reno:

I am writing as counsel for Sheriff Jay Printz. As you know, on June 27, 1997, the Supreme Court in *Printz v. United States* declared the Brady Act's required background checks by chief law enforcement officers (CLEOs) unconstitutional. President Clinton responded in the news media that he would urge all law enforcement departments in the States where the Brady Act applied to do the background checks voluntarily.

I would respectfully draw your attention to the fact that, under the laws of most if not all of these States, CLEO involvement in firearms transactions is contrary to law or not authorized by law. As stated in *Printz*, Slip Opinion at 36 n. 18:

> Both CLEOs before us here assert that they are prohibited from taking on these federal responsibilities under state law. That assertion is clearly correct with regard to Montana law, which expressly enjoins any "county . . . or other local government unit" from "prohibit[ing] . . . or regulat[ing] the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, [or] possession . . . of any . . . handgun," Mont. Code §45-8-351(1) (1995).

The Court added that "it is arguably correct with regard to Arizona law as well," citing Ariz. Rev. Stat. §13-3108(B) (1989). Similar preemption laws exist in most of the other States where the Brady Act applied. (See attached addendum.)

In addition to the preemption statutes, the general laws of

ADDENDUM

State	Statute
Alabama	Ala. Code § 11-45-1.1
Arizona	Ariz. Rev. Stat. Ann. § 13-3108(B)
Arkansas	Ark. Code Ann. § 14-54-1410
Kentucky	Ky. Rev. Stat. Ann. § 65.870
Maine	Me. Rev. Stat. Ann., tit. 25, Chap. 252-A, § 2011
Mississippi	Miss. Code Ann. § 45-9-51
Montana	Mont. Code Ann. § 45-8-351(1)
Nevada	Nev. Rev. Stat., Chaps. 244, 268, 269
New Mexico	Const. of N.M. Art. II, § 6
North Dakota	N.D. Cent. Code § 62.1-01-03
Oklahoma	Okla. Stat., tit. 21, § 1289.24
Pennsylvania	18 Pa. Cons. Stat. § 6120
Rhode Island	R.I. Gen. Laws § 11-47-58
South Carolina	S.C. Code Ann. § 23-31-510
South Dakota	S.D. Codified Laws Ann. § 7-18A-36; § 8-5-13; § 9-19-20
Texas	Local Gov't Code § 215.001
Vermont	Vt. Stat. Ann. tit. ____, § 2295
West Virginia	W.Va. Code § 8-12-5a
Wyoming	Wyo. Stat. § 6-8-401

HOUSE VOTE ON THE BRADY BILL

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were--yeas 238, nays 189, not voting 6, as follows:

Roll No. 564

[Roll No. 564]

YEAS--238

Abercrombie

Ackerman

Andrews (ME)

Andrews (NJ)

Andrews (TX)

Applegate

Bacchus (FL)

Baesler

Baker (CA)

Barca

Barrett (WI)

Bateman

Becerra

Beilenson

Berman

Bilirakis

Blackwell

Blute

Boehlert

Bonior

Borski

Brown (CA)

HOUSE VOTE - 238 to 189
Reps. 54-119 Dems. 184-69

SENATE VOTE - 63-36
Reps. 16-28 Dems. 47-8

-BDD

Brown (FL)

Brown (OH)

Bryant

Byrne

Cantwell

Cardin

Castle

Chapman

Clay

Clayton

Clement

Clyburn

Collins (IL)

Collins (MI)

Condit

Conyers

Cooper

Coppersmith

Coyne

Darden

DeFazio

DeLauro

Dellums

Derrick

Deutsch

Diaz-Balart

Dicks

Dixon

Dooley

Durbin

Edwards (CA)

Engel

English (AZ)

Eshoo

Evans

Farr

Fawell

Fazio

Fields (LA)

Filner

Fingerhut

Fish

Flake

Foglietta

Ford (MI)

Ford (TN)

Fowler

Frank (MA)

Franks (NJ)

Frost

Furse

Gallegly

Gallo

Gejdenson

Gephardt

Gibbons

Gilchrest

Gilman

Glickman

Gonzalez

Goodling

Gordon

Goss

Greenwood

Gutierrez

Hall (OH)

Hamburg

Hamilton

Harman

Hastings

Hefner

Hinchey

Hoagland

Hochbrueckner

Hoekstra

Horn

Hoyer

Huffington

Hughes

Hutto

Hyde

Jacobs

Jefferson

Johnson (CT)

Johnson (SD)

Johnson, E. B.

Johnston

Kaptur

Kennedy

Kennelly

Kildee

Kleczka

Klein

Klug

Kreidler

LaFalce

Lancaster

Lantos

Lazio

Leach

Lehman

Levin

Lewis (GA)

Lipinski

Lloyd

Long

Lowey

Machtley

Maloney

Mann

Manton

Margolies-Mezvinsky

Markey

Matsui

Mazzoli

McCloskey

McCurdy

McDade

McDermott

McHale

McKinney

McMillan

McNulty

Meehan

Meek

Menendez

Meyers

Mfume

Miller (CA)

Mineta

Minge

Mink

Molinari

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	Doc Contents	[Part] Contents	CR Issues by Date

BRADY HANDGUN VIOLENCE PREVENTION ACT (House - November 10, 1993)

Moran

Morella

Nadler

Neal (MA)

Neal (NC)

Olver

Owens

Oxley

Pallone

Pastor

Payne (NJ)

Pelosi

Pickle

Porter

Price (NC)

Quinn

Ramstad

Rangel

Reed

Regula

Reynolds

Roemer

Ros-Lehtinen

Rose

Rostenkowski

Roukema

Rowland

Roybal-Allard

Rush

Sabo

Sangmeister

Sawyer

Saxton

Schenk

Schroeder

Schumer

Scott

Sensenbrenner

Serrano

Sharp

Shaw

Shays

Shepherd

Skaggs

Slattery

Slaughter

Smith (MI)

Smith (NJ)

Spratt

Stark

Stearns

Stokes

Studds

Swett

Swift

Synar

Thomas (CA)

Thompson

Torkildsen

Torres

Torricelli

Towns

Traficant

Tucker

Upton

Valentine

Velazquez

Vento

Visclosky

Walsh

Washington

Waters

Watt

Waxman

Weldon

Wheat

Wolf

Woolsey

Wyden

Wynn

Yates

Young (FL)

Zimmer

NAYS--189

Allard

Archer

Armey

Bachus (AL)

Baker (LA)

Ballenger

Barcia

Barlow

Barrett (NE)

Bartlett

Barton

NAYS

Bentley

Bereuter

Bevill

Bilbray

Bishop

Bliley

Boehner

Bonilla

Boucher

Brewster

Brooks

Browder

Bunning

Burton

Buyer

Callahan

Calvert

Camp

Canady

Carr

Clinger

Coble

Coleman

Collins (GA)

Combest

Costello

Cox

Cramer

Crane

Crapo

Cunningham

Danner

de la Garza

DeLay

Dickey

Dingell

Doolittle

Dornan

Dreier

Duncan

Dunn

Edwards (TX)

Emerson

English (OK)

Everett

Ewing

Fields (TX)

Franks (CT)

Gekas

Geren

Gillmor

Gingrich

Goodlatte

Grams

Grandy

Green

Gunderson

Hall (TX)

Hancock

Hansen

Hastert

Hayes

Hefley

Herger

Hilliard

Hobson

Hoke

Holden

Houghton

Hunter

Hutchinson

Inglis

Inhofe

Inslee

Istook

Johnson (GA)

Johnson, Sam

Kanjorski

Kasich

Kim

King

Kingston

Klink

Knollenberg

Kolbe

Kyl

Lambert

LaRocco

Laughlin

Levy

Lewis (CA)

Lewis (FL)

Lightfoot

Linder

Livingston

Manzullo

Martinez

McCollum

McCrery

McHugh

McInnis

McKeon

Mica

Michel

Miller (FL)

Mollohan

Montgomery

Moorhead

Murtha

Myers

Natcher

Nussle

Oberstar

Obey

Ortiz

Orton

Packard

Parker

Paxon

Payne (VA)

Penny

Peterson (FL)

Peterson (MN)

Petri

Pickett

Pombo

Pomeroy

Portman

Poshard

Pryce (OH)

Quillen

Rahall

Ravenel

Richardson

Ridge

Roberts

Rogers

Rohrabacher

Roth

Royce

Sanders

Santorum

Sarpalius

Schaefer

Schiff

Sisisky

Skeen

Skelton

Smith (IA)

Smith (OR)

Smith (TX)

Snowe

Solomon

Spence

Stenholm

Strickland

Stump

Stupak

Sundquist

Talent

Tanner

Tauzin

Taylor (MS)

Taylor (NC)

Tejeda

Thomas (WY)

Thornton

Thurman

Unsoeld

Volkmer

Vucanovich

Walker

Whitten

Williams

Wilson

Wise

Young (AK)

Zeliff

NOT VOTING--6

Deal

Kopetski

McCandless

Moakley

Murphy

Shuster

The Clerk announced the following pair:

On this vote:

[Page: H9146]

Mr. Moakley for, with Mr. Murphy against.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

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BRADY HANDGUN VIOLENCE PREVENTION ACT (Senate - November 20, 1993)
Sen. FORD

SENATE VOTE ON THE BRADY BILL

YEAS--63

Akaka

Baucus

Biden

Bingaman

Bond

Boren

Boxer

Bradley

Bumpers

Byrd

Chafee

Coats

Cohen

Conrad

Danforth

Daschle

DeConcini

Dodd

Durenberger

Exon

Feingold

Feinstein

Ford

Glenn

Gorton

Graham

Harkin

Hatfield

Hutchison

Inouye

Jeffords

Kassebaum

Kennedy

Kerrey

Kerry

Kohl

Lautenberg

Levin

Lieberman

Lugar

Mathews

Metzenbaum

Mikulski

Mitchell

Moseley-Braun

Moynihan

Murray

Nunn

Packwood

Pell

Pryor

Reid

Riegle

Robb

Rockefeller

Roth

Sarbanes

Sasser

Simon

Thurmond

Warner

Wellstone

Wofford

NAYS

NAYS--36

Bennett

Breaux

Brown

Bryan

Burns

Campbell

Cochran

Coverdell

Craig

D'Amato

Dole

Domenici

Faircloth

Gramm

Grassley

Gregg

Hatch

Heflin

Helms

Hollings

Johnston

Kempthorne

Leahy

Lott

Mack

McCain

McConnell

Murkowski

Nickles

Pressler

Shelby

Simpson

Smith

Specter

Stevens

Wallop

NOT VOTING--1

Dorgan

So, the bill (H.R. 1025), as amended, was passed.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I ask unanimous consent that S. 414 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House on the disagreeing votes of the two Houses on H.R. 1025, and the Chair is authorized to appoint conferees on the part of the Senate.

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TELEPHONE (703) 352-7276
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JUL 8

June 30, 1997

President Bill Clinton
The White House
Washington, D.C. 20500

Attorney General Janet Reno
U.S. Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 20530

Re: "Voluntary" Background Checks Under Brady Act

Dear President Clinton and Attorney General Reno:

I am writing as counsel for Sheriff Jay Printz. As you know, on June 27, 1997, the Supreme Court in *Printz v. United States* declared the Brady Act's required background checks by chief law enforcement officers (CLEOs) unconstitutional. President Clinton responded in the news media that he would urge all law enforcement departments in the States where the Brady Act applied to do the background checks voluntarily.

I would respectfully draw your attention to the fact that, under the laws of most if not all of these States, CLEO involvement in firearms transactions is contrary to law or not authorized by law. As stated in *Printz*, Slip Opinion at 36 n. 18:

> Both CLEOs before us here assert that they are prohibited from taking on these federal responsibilities under state law. That assertion is clearly correct with regard to Montana law, which expressly enjoins any "county . . . or other local government unit" from "prohibit[ing] . . . or regulat[ing] the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, [or] possession . . . of any . . . handgun," Mont. Code §45-8-351(1) (1995).

The Court added that "it is arguably correct with regard to Arizona law as well," citing Ariz. Rev. Stat. §13-3108(B) (1989). Similar preemption laws exist in most of the other States where the Brady Act applied. (See attached addendum.)

In addition to the preemption statutes, the general laws of the states governing the duties of law enforcement do not encompass voluntary execution of federal law, and law enforcement departments are not authorized to expend funds on volunteer activities not sanctioned by State law. *See, e.g.*, Mont. Code §7-32-2121 (duties of sheriff under State law), §§7-4-2110, 7-4-2203 (board of county commissioners supervise officials charged with the disbursement of public revenues and prosecute delinquencies). All of the other States also define law enforcement duties and prohibit use of funds for purposes unauthorized by State law.

The above limitations apply as much to departments of State police and Attorneys General as to local sheriffs and police chiefs. State officials are not authorized to expend funds for activities not santioned by State law any more than are local officials.

Certainly the Supreme Court's decision does not create a problem so urgent as would justify encouraging local law enforcement officials to violate the laws of their own States. In 1994, federal district courts in Montana, Mississippi, Arizona, Vermont, and Louisiana declared the Brady Act unconstitutional. The Brady Act has been inoperative in Texas, Mississippi, and Louisiana since March 1996, when it was declared unconstitutional in *Koog v. United States*, 79 F.3d 452 (5th Cir. 1996). Yet no one has suggested since then that a crisis was forthcoming in those States such as warranted acting outside of and in conflict with State law.

The above points to the necessity of putting on line the permanent provision of the Brady Act, the federal instant check. This task should be accomplished with all deliberate speed. Meanwhile, in urging CLEOs to execute the Brady law voluntarily, we urge you to inform them that you do not warrant that they may lawfully do so under the laws of their respective States, and that you warn them that expenditure of funds for unauthorized execution of federal law may be contrary to State law.

Sincerely,

Stephen P. Halbrook

Stephen P. Halbrook

cc: Honorable Walter Dellinger
Acting Solicitor General
Department of Justice
10th St. and Constitution Ave., N.W.
Washington, D.C. 20530

ADDENDUM

State	Statute
Alabama	Ala. Code § 11-45-1.1
Arizona	Ariz. Rev. Stat. Ann. § 13-3108(B)
Arkansas	Ark. Code Ann. § 14-54-1410
Kentucky	Ky. Rev. Stat. Ann. § 65.870
Maine	Me. Rev. Stat. Ann., tit. 25, Chap. 252-A, § 2011
Mississippi	Miss. Code Ann. § 45-9-51
Montana	Mont. Code Ann. § 45-8-351(1)
Nevada	Nev. Rev. Stat., Chaps. 244, 268, 269
New Mexico	Const. of N.M. Art. II, § 6
North Dakota	N.D. Cent. Code § 62.1-01-03
Oklahoma	Okla. Stat., tit. 21, § 1289.24
Pennsylvania	18 Pa. Cons. Stat. § 6120
Rhode Island	R.I. Gen. Laws § 11-47-58
South Carolina	S.C. Code Ann. § 23-31-510
South Dakota	S.D. Codified Laws Ann. § 7-18A-36; § 8-5-13; § 9-19-20
Texas	Local Gov't Code § 215.001
Vermont	Vt. Stat. Ann. tit. ____, § 2295
West Virginia	W.Va. Code § 8-12-5a
Wyoming	Wyo. Stat. § 6-8-401