

# C.R.S. 24-33.5-424

## Copy Citation

Statutes current through all 2021 Regular Session bills with safety clauses, effective as of July 7, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

### 24-33.5-424. National instant criminal background check system - state point of contact - fee - grounds for denial of firearm transfer - appeal - rule-making - unlawful acts - instant criminal background check cash fund - creation

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**(1)** For purposes of this section:

**(a)** "18 U.S.C. sec. 922 (t)" means 18 U.S.C. sec. 922 (t) as it exists as of March 7, 2000, or as it may be amended.

**(b)** "Firearm" has the same meaning as set forth in 18 U.S.C. sec. 921 (a)(3), as amended.

**(c)** "NICS system" means the national instant criminal background check system created by Public Law 103-159, known as the federal "Brady Handgun Violence Prevention Act", the relevant portion of which is codified at 18 U.S.C. sec. 922 (t).

**(d)** "Transfer" means the sale or delivery of any firearm in this state by a transferor to a transferee. "Transfer" shall include redemption of a pawned firearm by any person who is not licensed as a federal firearms licensee by the federal bureau of alcohol, tobacco, firearms, and explosives, or any of its successor agencies. "Transfer" shall not include the return or replacement of a firearm that had been delivered to a federal firearms licensee for the sole purpose of repair or customizing.

**(e)** "Transferee" means any person who is not licensed as a federal firearms licensee by the federal bureau of alcohol, tobacco, firearms, and explosives, or any of its successor agencies, in accordance with the federal "Gun Control Act of 1968", chapter 44 of title 18 U.S.C., as amended, and to whom a transferor wishes to sell or deliver a firearm.

**(f)** "Transferor" means any licensed importer, licensed manufacturer, or licensed dealer as defined in 18 U.S.C. sec. 921 (a)(9), (a)(10), and (a)(11), as amended, respectively.

**(2)** The bureau is hereby authorized to serve as a state point of contact for implementation of 18 U.S.C. sec. 922 (t), all federal regulations and applicable guidelines adopted pursuant thereto, and the NICS system.

**(3)**

**(a)** The bureau, acting as the state point of contact for implementation of 18 U.S.C. sec. 922 (t), shall transmit a request for a background check in connection with the prospective transfer of a firearm to the NICS system and may also search other databases. The bureau shall deny a transfer of a firearm to a prospective transferee if the transfer would violate 18 U.S.C. sec. 922 (g) or (n) or result in the violation of any provision of state law, including but not limited to section 18-12-108 (4)(c), C.R.S., involving acts which, if committed by an adult, would constitute a burglary, arson, or any felony involving the use of force or the use of a deadly weapon.

**(b)**

**(1)** In addition to the grounds for denial specified in paragraph (a) of this subsection (3), the bureau shall deny a transfer of a firearm if, at any time the bureau transmits the request or searches other databases, information indicates that the prospective transferee:

**(A)** Has been arrested for or charged with a crime for which the prospective transferee, if convicted, would be prohibited under state or federal law from purchasing, receiving, or possessing a firearm and either there has been no final disposition of the case or the final disposition is not noted in the other databases; or

**(B)** Is the subject of an indictment, an information, or a felony complaint alleging that the prospective transferee has committed a crime punishable by imprisonment for a term exceeding one year as defined in 18 U.S.C. sec. 921 (a)(20), as amended, and either there has been no final disposition of the case or the final disposition is not noted in the other databases.

**(II)** Repealed.

**(b.3)** In addition to the grounds for denial specified in subsections (3)(a) and (3)(b) of this section, the bureau shall deny a transfer of a firearm if the prospective transferee has been convicted of any of the following offenses committed on or after June 19, 2021, if the offense is classified as a misdemeanor, or if the prospective transferee has been convicted in another state or jurisdiction, including a military or federal jurisdiction, of an offense that, if committed in Colorado, would constitute any of the following offenses classified as a misdemeanor offense, within five years prior to the transfer:

**(I)** Assault in the third degree, as described in section 18-3-204;

**(II)** Sexual assault, as described in section 18-3-402 (1)(e);

**(III)** Unlawful sexual contact, as described in section 18-3-404;

**(IV)** Child abuse, as described in section 18-6-401;

**(V)** Violation of a protection order, as described in section 18-6-803.5 (1)(a) and (1)(c)(I);

**(VI)** A crime against an at-risk person, as described in section 18-6.5-103;

**(VII)** Harassment, as described in section 18-9-111 (1)(a);

**(VIII)** A bias-motivated crime, as described in section 18-9-121;

**(IX)** Cruelty to animals, as described in section 18-9-202 (1)(a) and (1.5);

**(X)** Possession of an illegal weapon, as described in section 18-12-102 (4); or

**(XI)** Unlawfully providing a firearm other than a handgun to a juvenile, as described in section 18-12-108.7 (3).

**(b.5)** The bureau shall not approve a transfer of a firearm until the bureau determines that its background investigation is complete and that the transfer would not violate 18 U.S.C. sec. 922 (g) or (n) or result in the violation of state law.

**(c)** The bureau is authorized to cooperate with federal, state, and local law enforcement agencies to perform or assist any other law enforcement agency in performing any firearm retrievals, and to assist in the prosecution of any rescinded transfers.

**(3.5)**

**(a)** On and after March 20, 2013, the bureau shall impose a fee for performing an instant criminal background check pursuant to this section. The amount of the fee shall not exceed the total amount of direct and indirect costs incurred by the bureau in performing the background check.

**(b)** The bureau shall transmit all moneys collected pursuant to this subsection (3.5) to the state treasurer, who shall credit the same to the instant criminal background check cash fund, which fund is hereby created and referred to in this subsection (3.5) as the "fund".

**(c)** The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct costs associated with performing background checks pursuant to this section. The state treasurer may invest any moneys in the fund not expended for the purpose of this section as provided by law. The state treasurer shall credit any interest and income derived from the deposit and investment of moneys in the fund to the fund.

**(d)** Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited to any other fund. To the extent practicable, the bureau shall use any such remaining funds to reduce the amount of the fee described in paragraph (a) of this subsection (3.5).

**(e)** The bureau is authorized to contract with a public or private entity for services related to the collection of the fee described in paragraph (a) of this subsection (3.5).

**(f)** Notwithstanding section 24-1-136 (11)(a)(I), on January 15, 2014, and on January 15 of each calendar year thereafter, the bureau shall report to the joint budget committee concerning:

**(I)** The number of full-time employees used by the bureau in the preceding year for the purpose of performing background checks pursuant to this section; and

**(II)** The calculations used by the bureau to determine the amount of the fee imposed pursuant to this subsection (3.5).

**(g)** Repealed.

**(4)** Pursuant to section 16-21-103 (4)(c), C.R.S., and section 19-1-304 (1)(b.8), C.R.S., the bureau shall receive and process information concerning final case disposition data of any cases prosecuted in a court in this state within seventy-two hours after the final disposition of the case for purposes of carrying out its duties under this section.

**(5)**

**(a)** Upon denial of a firearm transfer, the bureau shall notify the transferor and send notice of the denial to the NICS system, pursuant to 18 U.S.C. sec. 922 (t). In addition, the bureau shall immediately send notification of such denial and the basis for the denial to the federal, state, and local

law enforcement agencies having jurisdiction over the area in which the transferee resides and in which the transferor conducts any business.

**(b)** Upon denial of a firearm transfer, the transferor shall provide the transferee with written information prepared by the bureau concerning the procedure by which the transferee, within thirty days after the denial, may request a review of the denial and of the instant criminal background check records that prompted the denial. Within sixty days after receiving such a request, the bureau shall:

**(I)** Perform a thorough review of the instant criminal background check records that prompted the denial; and

**(II)** Render a final administrative decision regarding the denial.

**(c)** Repealed.

**(d)** If the bureau reverses a denial, the bureau shall immediately request that the agency that provided the records prompting the denial make a permanent change to such records if necessary to reflect accurate information. In addition, the bureau shall provide immediate notification of such reversal to all agencies and entities that had been previously notified of a denial pursuant to paragraph (a) of this subsection (5).

**(6)** If in the course of conducting any background check pursuant to this section, whether the firearms transaction is approved or denied, the bureau obtains information that indicates the prospective transferee is the subject of an outstanding warrant, the bureau shall immediately provide notification of such warrant to the federal, state, and local law enforcement agencies having jurisdiction over the area in which the transferee resides and in which the transferor conducts any business.

**(7)**

**(a)** The executive director or his or her designee shall adopt such rules as are necessary to:

**(I)** Carry out the duties of the bureau as the state point of contact, as those duties are set forth in federal law, and assist in implementing 18 U.S.C. sec. 922 (t), all federal regulations and applicable guidelines adopted pursuant thereto, and the NICS system; and

**(II)** Ensure the proper maintenance, confidentiality, and security of all records and data provided pursuant to this section.

**(b)** The rules adopted pursuant to paragraph (a) of this subsection (7) shall include, but need not be limited to:

**(I)** Procedures whereby a prospective transferee whose transfer is denied may request a review of the denial and of the instant criminal background check records that prompted the denial;

**(II)** Procedures regarding retention of records obtained or created for purposes of this section or for implementation of 18 U.S.C. sec. 922 (t); except that the bureau shall not retain a record for more than forty-eight hours after the day on which the bureau approves the transfer;

**(III)** Procedures and forms adopted by the bureau that request information from and establish proper identification of a prospective transferee and that may correspond with any firearms transaction record required by 18 U.S.C. sec. 922 (t). Such procedures and forms shall not preclude any person from making a lawful firearm transfer under this section.

**(IV)** Procedures for carrying out the duties under this section, including at a minimum:

**(A)** That the bureau shall be open for business at least twelve hours per day every calendar day, except Christmas day and Thanksgiving day, in order to transmit the requests for a background check to the NICS system and search other databases;

**(B)** That the bureau shall provide a toll-free telephone number for any person calling from within the state that is operational every day that the office is open for business for the purpose of responding to requests from transferors in accordance with this section; and

**(C)** That the bureau shall employ and train personnel at levels that ensure prompt processing of the reasonably anticipated volume of inquiries received under this section.

**(8)** Nothing in this section shall be construed to create any civil cause of action for damages in addition to that which is available under the "Colorado Governmental Immunity Act", article 10 of this title.

**(9)** No act performed by the bureau or its agents in carrying out their lawful duties under this section shall be construed to be a violation of any provision of title 18, C.R.S.

**(10)**

**(a)** It is unlawful for:

**(I)** Any person, in connection with the acquisition or attempted acquisition of a firearm from any transferor, to willfully make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification that is intended or likely to deceive such transferor with respect to any fact material to the lawfulness of the sale or other disposition of such firearm under federal or state law;

**(II)** Any transferor knowingly to request criminal history record information or a background check under false pretenses or knowingly to disseminate criminal history record information to any person other than the subject of such information;

**(III)** Any agent or employee or former agent or employee of the bureau knowingly to violate the provisions of this section.

**(b)** Any person who violates the provisions of paragraph (a) of this subsection (10) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**(11)** Any transferor who complies with the provisions of this section shall not be subject to any civil or criminal liability or regulatory sanction that may arise from the lawful transfer or lawful denial of the transfer of a firearm.

## History

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### SOURCE:

**L. 2000:** Entire section added, p. 8, § 3, effective March 7. **L. 2002:** (10)(b) amended, p. 1533, § 252, effective October 1. **L. 2007:** (1)(d) and (1)(e) amended, p. 2035, § 53, effective June 1. **L. 2010:** (3)(b)(II) repealed,(HB 10-1391), ch. 363, p. 1718, § 1, effective June 7; (5)(b) and (5)(c) amended,(HB 10-1411), ch. 370, p. 1737, § 1, effective June 7. **L. 2013:** (3.5) added,(HB 13-1228), ch. 46, p. 125, § 1, effective March 20. **L. 2017:** IP(3.5)(f) amended,(HB 17-1059), ch. 91, p. 278, § 6, effective August 9. **L. 2019:** (1)(d) and (1)(e) amended,(SB 19-241), ch. 390, p. 3469, § 28, effective August 2.; **L. 2021:** (HB1298), ch. 268, § 2, effective June 19, 2021.

### ▼ Annotations

#### State Notes

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#### Notes

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### Editor's note:

Subparagraph (3.5)(g)(II) provided for the repeal of subsection (3.5)(g), effective July 1, 2014. (See L. 2013, p. 125.)

**Cross references:**(1) For the legislative declaration contained in the 2000 act enacting this section, see section 1 of chapter 5, Session Laws of Colorado 2000.

(2) For the legislative declaration contained in the 2002 act amending subsection (10)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.