

SHORT TITLE: Oklahoma State Bureau of Investigation; creating the Oklahoma Insta-Check System for the Transfer of Firearms; establishing certain procedures for gun dealers; criminalizing certain actions; setting penalties; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 714

By: Wilkerson

AS INTRODUCED

An Act relating to the transfer of firearms; creating the Oklahoma Insta-Check System for the Transfer of Firearms; providing short title; directing certain system be implemented by OSBI; defining terms; prohibiting manufacture, import, sale, or transfer of certain weapons; setting penalties; establishing procedures for transfer of firearm; authorizing destruction of certain records after certain times; establishing telephone procedure to check criminal history records; authorizing transfer of firearm after certain time without certain records check; specifying nature of required identification; authorizing verification of identity of purchaser; requiring telephone services during certain periods be established by OSBI; granting certain immunity; authorizing certain information be retained for certain period; exempting certain records from the Oklahoma Open Records Act; requiring gun dealers records be available for criminal investigation; prohibiting delivery of loaded firearm; requiring certain rules be promulgated by OSBI; exempting transfer of firearms between gun dealers for criminal prosecution; establishing a fee for criminal history record check; making unlawful the giving of false information in a firearm transaction; criminalizing certain transfer of

firearms; authorizing OSBI to respond to inquiry of stolen firearm; prohibiting transfer of stolen firearms; prohibiting unlawful purchase of firearms; defining offenses; requiring certain reports be kept by gun dealer; authorizing Bureau to design certain forms; directing certain report be delivered or mailed to law enforcement authority; criminalizing transport or receipt of firearm with intent to commit felony; prohibiting removal of identification number on firearm; declaring possession of firearm with altered identification number to be presumptive evidence of certain offense; prohibiting certain person from having possession of antique firearm; providing limitation to transfer of firearm to certain recipients; construing provision for transfer of firearm to certain recipients; prohibiting giving child under certain age certain explosive substance; authorizing purchase of certain firearms in contiguous state for certain persons; providing for expiration of provision; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291 of Title 21, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall be known and may be cited as the "Oklahoma Insta-Check System for the Transfer of Firearms".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State Bureau of Investigation shall implement an "insta-check" system for providing criminal history record checks for the purpose of facilitating the transfer of firearms in compliance with state and federal law.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Antique firearm" has the meaning given that term in 18 U.S.C., Section 921;

2. "Bureau" or "OSBI" means the Oklahoma State Bureau of Investigation;

3. "Criminal history record" means the arrest and disposition records held by the Bureau and any other applicable records as directed by state and federal law and accessible to the Bureau, including those contained in the National Insta-Check System of the Federal Bureau of Investigation;

4. "Firearm" means any rifle, shotgun or pistol, except an antique firearm;

5. "Firearms transaction record" means the record required by 18 U.S.C., Sections 921 through 929, relating to a firearms transaction;

6. "Firearms transaction thumbprint form" means a form provided to gun dealers by the OSBI for imprinting the purchaser's thumbprint;

7. "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C., Section 921, of selling, leasing or otherwise transferring a firearm whether the person is a retail dealer, pawnbroker or otherwise;

8. "Oklahoma Insta-Check System" or "OICS" means that system maintained and operated by the Bureau to provide federally licensed gun dealers with access to criminal history record information for the purposes of conducting a transfer of a firearm; and

9. "Purchaser" means a person who buys, leases, or otherwise receives a firearm from a gun dealer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who manufactures or causes to be manufactured within this state, or imports into this state, or offers, exposes for sale, sells, or transfers any handgun, rifle, shotgun, firearms silencer, or machine gun in any manner, except as otherwise provided by law, is guilty of a felony.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this act, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

1. Require the purchaser to present to the gun dealer his or her current identification which shall meet the requirements of this section;

2. Complete the firearms transaction record and obtain the signature of the purchaser on the record;

3. Obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy;

4. Request by telephone the OSBI to conduct a criminal history record check of the purchaser and provide the following information to the OSBI:

- a. the federal firearms license number of the gun dealer,
- b. the business name of the gun dealer,
- c. the address of the place of transfer,
- d. the name of the person making the transfer,
- e. the make, model, caliber, and manufacturer's number of the firearm being transferred,
- f. the name and date of birth of the purchaser,
- g. the social security number of the purchaser, and
- h. the type, issuer, and identification number, if any, of the identification presented by the purchaser; and

5. Receive a unique approval number from the Bureau and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form, if the transfer is approved. If the transfer is disapproved, the firearm shall not be transferred, except as provided by law.

B. The Bureau shall publish the firearms transaction thumbprint form and shall provide the form to gun dealers upon request and payment of the cost of the forms. The gun dealer may destroy the firearms transaction thumbprint form five (5) years after the completion of the firearms transaction thumbprint form.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a telephone request from a gun dealer for a criminal history record check, the Bureau shall immediately, during the gun dealer's telephone call or by return call:

1. Determine, from criminal records and other available information, whether the purchaser is qualified or disqualified from completing the purchase; and

2. Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

B. If the Bureau is unable to determine if the purchaser is qualified or disqualified from completing the transfer within thirty (30) minutes, the Bureau shall notify the dealer and provide the dealer with an estimate of the time when the Bureau will provide the requested information. If the Bureau fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchase is disqualified before the close of the gun dealer's fifth business day following the request by the dealer for a criminal history record check, the dealer may deliver the firearm to the purchaser.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Identification required of a purchaser pursuant to this act shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

1. Is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or an international quasi-governmental organization; and

2. Is intended to be used for identification of the individual or is commonly accepted for the purpose of identification of the individual.

B. If the identification presented by the purchaser does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Director of the OSBI may

specify by rule the types of identification that may be acceptable as a second piece of identification. The Bureau may require that the dealer verify the identification of the purchaser, if the identity is in question, by sending the thumbprints of the purchaser to the Bureau.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.7 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The Bureau shall establish a telephone number that shall be operational seven (7) days a week, excluding state holidays as designated by the Governor, between the hours of 8 a.m. and 8 p.m. for the purpose of responding to inquiries from gun dealers for a criminal history record check pursuant to the provisions of this act.

B. No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this act provided the employee, official or agency acts in good faith and without malice.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.8 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The Bureau may retain a record of the information obtained during a telephone request for a criminal records check for no more than five (5) years. The record of the information obtained during a telephone request for a criminal records check by a gun dealer shall be exempt from disclosure under the provisions of the Oklahoma Open Records Act.

B. A gun dealer shall make all firearms transaction records available upon request by a law enforcement officer as part of a criminal investigation. A gun dealer shall only deliver to the purchaser a firearm which is unloaded. Delivery of a loaded firearm is a misdemeanor

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.9 of Title 21, unless there is created a duplication in numbering, reads as follows:

In accordance with the provisions of this act, the Director of the Bureau shall promulgate rules necessary for:

1. The design of the firearms transaction thumbprint form;
2. The maintenance of a procedure to correct errors in the criminal records of the Bureau;
3. The operation of a security system to identify dealers who may request a criminal history record check pursuant to this act;
4. The creation and maintenance of a database of the business hours of gun dealers; and
5. The implementation of the provisions of this act, or any future modifications thereto.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.10 of Title 21, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall not apply to transactions between persons licensed as gun dealers under 18 U.S.C., Section 923.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.11 of Title 21, unless there is created a duplication in numbering, reads as follows:

Gun dealers shall pay the OSBI a fee of Fifteen Dollars (\$15.00) for each criminal history record check request made under the provisions of this act. The Director of the OSBI shall establish procedures for the collection and enforcement of this section.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.12 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. A person commits the crime of providing false information in connection with a transfer of a firearm if the person knowingly

provides a false name or false information or presents false identification in connection with a purchase or transfer of a firearm under this act.

B. It shall be unlawful for any person to provide false information in connection with a transfer of a firearm, and the violator, upon conviction, shall be guilty of a felony.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.13 of Title 21, unless there is created a duplication in numbering, reads as follows:

A person commits the crime of improperly transferring a firearm if the person is a gun dealer who sells, leases, or otherwise transfers a firearm in violation of any provision of this act. Improper transfer of a firearm is a felony.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.14 of Title 21, unless there is created a duplication in numbering, reads as follows:

The Bureau may respond to a telephone request from any person wanting to know if Bureau records show that a firearm is stolen. No public employee, official or agency shall be held criminally or civilly liable for performing the investigation allowed by this section; provided, the employee, official or agency acts in good faith and without malice. The Bureau will conduct a check of the firearm being transferred to determine if there is any record indicating that the firearm is stolen.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.15 of Title 21, unless there is created a duplication in numbering, reads as follows:

It shall be unlawful for any person to transfer a firearm that is stolen. Transferring a stolen firearm is a felony.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.16 of Title 21, unless there is created a duplication in numbering, reads as follows:

A person commits the crime of unlawfully purchasing a firearm if the person, knowing that he or she is prohibited by state or federal law from owning or possessing a firearm or having a firearm under his or her custody or control, purchases or attempts to purchase a firearm. Unlawfully purchasing a firearm is a felony

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.17 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Whenever a person engaged in the business of selling, leasing or otherwise transferring a firearm as defined in 18 U.S.C., Section 921, whether the person operates as a retail dealer, pawnbroker or other entity, or whenever such person buys or accepts in trade any used firearm, the person shall enter into a register the following information:

1. The time, date, and place of the purchase or trade;
2. The name of the person selling or trading the firearm;
3. The number of the identification documentation presented by the person; and
4. The make, model and manufacturer's number of the firearm.

B. The register shall be maintained on a printed form designed by the Bureau. The form may be obtained from the Bureau on application of the gun dealer and payment of the cost of the forms. A duplicate sheet of the register shall, on the day of the purchase or trade, be hand delivered or mailed to the local law enforcement authority. Any violation of this section by any person engaged in the business of selling, leasing or otherwise transferring a firearm is a misdemeanor.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.18 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person with intent to commit a felony, or knowing that a felony may be committed with the firearm, who ships, transports,

receives, sells or otherwise furnishes any firearm, is guilty of a felony.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.19 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who intentionally alters, removes or obliterates the identification number of any firearm for an unlawful purpose shall be punished, upon conviction, by imprisonment in the custody of the Department of Corrections for a term not exceeding ten (10) years. Possession of a firearm with an altered, removed, or obliterated identification number is presumptive evidence that the possessor altered, removed, or obliterated the identification number.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.20 of Title 21, unless there is created a duplication in numbering, reads as follows:

The provisions of this act shall not apply to antique firearms; provided, however, possession of an antique firearm by a person prohibited by state or federal law from possessing a firearm is a felony.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.21 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Unless relief has been granted under state law, federal law as defined by 18 U.S.C., Section 925(c) or the criminal history expungement laws of this state or an equivalent law of another jurisdiction, no person shall intentionally sell, deliver, or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

1. Is under eighteen (18) years of age or has been adjudicated delinquent within the preceding ten (10) years;
2. Has been convicted of a felony or found guilty of a felony;
3. Has any outstanding felony warrant for arrest;

4. Is free on any form of pre-trial release for a felony;

5. Was committed to any mental health authority;

6. Was found to be mentally ill and subject to an order of a court of competent jurisdiction that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

7. Has been convicted of a misdemeanor involving violence or found guilty of a misdemeanor involving violence within the previous four (4) years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor involving assault, assault and battery, threats or illegal force, stalking, child endangerment, or intentional or reckless injury to another person.

B. The provisions of this section shall not prohibit any parent or guardian, or another person with the consent of a parent or guardian, from transferring any firearm to a minor, unless otherwise prohibited by law, or to any person making a temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.22 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who sells, exchanges, barter or gives to any child under the age of fourteen (14) years, any explosive article or substance, other than an ordinary firecracker containing not more than ten (10) grains of gunpowder, or who sells, exchanges, barter or gives to any such child any instrument or apparatus, the chief utility of which is the fact that it is used, or is ordinarily capable of being used, as an article or device to increase the force or intensity of any explosive, or to direct or control the discharge of any such explosive, is guilty of a felony.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1291.23 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Contiguous state" means Texas, Kansas, Colorado, or Arkansas; and

2. "Resident" includes an individual or a corporation or other business entity that maintains a place of business in this state.

B. A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive or transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made, or any federal law.

C. This section shall not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

D. This section shall expire upon the date that section 922(b)(3) of the federal Gun Control Act of 1968, 18 U.S.C., Section 922(b)(3) and regulations pursuant thereto, are repealed or rescinded.

SECTION 25. This act shall become effective November 1, 1997.

46-1-0553

NP