STATE QUESTION NO. 1

Amendment to Title 15 of the *Nevada Revised Statutes*

Shall Chapter 202 of the *Nevada Revised Statutes* be amended to prohibit, except in certain circumstances, a person from selling or transferring a firearm to another person unless a federally-licensed dealer first conducts a federal background check on the potential buyer or transferee?

Yes No

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend Chapter 202 of the *Nevada Revised Statutes* to prohibit, except in certain defined circumstances, any person who is not a licensed dealer, importer, or manufacture of firearms from selling or transferring a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee. To request the required background check, the law would require both the seller/transferor and the buyer/transferee to appear jointly with the firearm before a federally licensed firearms dealer. The background check would be conducted using the National Instant Criminal Background Check System administered by the Federal Bureau of Investigations (FBI), and the federally-licensed dealer would be able to charge a reasonable fee for conducting the background check and facilitating the firearm transfer between unlicensed persons.

The measure would establish various exemptions to the mandatory background check requirements, including:

- The sale or transfer of a firearm by or to any law enforcement agency;
- To the extent he or she is acting within the course and scope of his or her employment and official duties, the sale or transfer of a firearm by or to any peace officer, security guard entitled to carry a weapon, member of the armed forces, and federal official;
- The sale or transfer of an antique firearm;
- The sale or transfer of a firearm between immediate family members, defined as spouses and domestic partners, as well as parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews, whether whole or half blood, adoption or step-relation; and
- The transfer of a firearm to an executor, administrator, trustee, or personal representative of an estate or trust that occurs by operation of law upon the death of the former owner of the firearm.

Certain temporary transfers of a firearm without a background check would also be allowed under the measure, as long as the temporary transfer is to a person who is not prohibited from buying or possessing a firearm under state or federal law, the transferor has no reason to

believe that the transferee is prohibited from buying or possessing firearms under state or federal law, and the transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime. Allowable temporary transfers would include:

- Temporary transfers required to prevent imminent death or great bodily harm;
- Temporary transfers at an established shooting range authorized by the governing body of the jurisdiction in which the range is located;
- Temporary transfers at a lawfully organized competition involving the use of a firearm;
- Temporary transfers while participating in or practicing for a performance by an organized group that uses firearms as part of a public performance;
- Temporary transfers while hunting or trapping if the transfer occurs in the area where hunting and trapping is legal and the transferee holds all licenses or permits required for such hunting or trapping; and
- Temporary transfers while in the presence of the transferor.

Lastly, approval of this ballot measure would establish criminal penalties on an unlicensed person who sells or transfers one or more firearms to another unlicensed person in violation of the provisions of the measure. For the first conviction involving the sale or transfer of one or more firearms, the seller or transferor would be guilty of a gross misdemeanor, punishable by up to a year in county jail, a fine up $1,000, or both imprisonment and a fine. For the second and each subsequent conviction, the seller or transferor would be guilty of a category C felony, which is punishable by imprisonment between one and five years in state prison and a fine of not more than $10,000.

A "Yes" vote would amend Chapter 202 of the *Nevada Revised Statutes* to prohibit, except in certain circumstances, any person who is not a licensed dealer, importer, or manufacture of firearms from selling or transferring a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee.

A "No" vote would retain the provisions of Chapter 202 of the *Nevada Revised Statutes* in their current form. These provisions currently allow, but do not require, a background check be performed on a firearm buyer or transferee before the private sale or transfer of a firearm.

DIGEST— Chapter 202 of the *Nevada Revised Statutes* contains provisions relating to crimes against public health and safety. Approval of this ballot measure would amend Chapter 202 of the *Nevada Revised Statutes* to require that a federal background check be performed before private sales and transfers of firearms, except in certain defined circumstances. In order to obtain a required background check, both the firearm seller/transferor and the firearm buyer/transferee would be required to appear together before a federally licensed firearms dealer. The background check would be conducted using the National Instant Criminal Background Check System administered by the Federal Bureau of Investigations (FBI), and the federally-licensed dealer would be able to charge a reasonable fee for conducting the background check and facilitating the firearm transfer. A person who violates the new

background check requirements would be guilty of a gross misdemeanor for the first offence and a category C felony for the second or subsequent offences. It is undetermined at this time whether approval of this ballot measure would have any impact on public revenue.

If this ballot measure is approved, the following sales or transfers would be exempt from the background check requirement: firearm sales or transfers between law enforcement agencies, peace officers, security guards, armed forces members, and federal officials; the sale or transfer of an antique firearm; the sale or transfer of a firearm between immediate family members; the transfer of a firearm to an estate or trust that occurs upon the death of the former owner of the firearm; temporary firearm transfers to prevent imminent death or great bodily harm; and temporary firearm transfers at authorized shooting ranges, at lawful firearm competitions, for use in public performances; while hunting or trapping, or while in the presence of the transferor.

Current Nevada law, found in Chapter 202 of the *Nevada Revised Statutes*, allows, but does not require, a private person who wishes to transfer a firearm to another person to request a background check from the Central Repository for Nevada Records of Criminal History on the person who wishes to acquire the firearm. If a background check is requested, the Central Repository has five days to perform the background check and notify the person who requested the background check if the receipt of a firearm by the person who wished to acquire the firearm would violate a state or federal law. The current law allows the Central Repository to charge a reasonable fee for performing a requested background check.

ARGUMENT FOR PASSAGE

The Background Check Initiative

Vote yes on Question 1.

Vote yes on Question 1 and close the loophole that makes it easy for convicted felons, domestic abusers, and people with severe mental illness to buy guns without a criminal background check.

It is illegal for these dangerous people to buy guns.[1] That's why criminal background checks are required for every gun sale from a licensed dealer.[2] But no background check is required in Nevada if a person buys a gun from an unlicensed seller, including buying from a stranger they meet online or at a gun show.

Question 1 would create a level playing field where everyone would have to follow the same rules, whether they buy and sell at a gun store, at a gun show, or using the Internet.

Voting yes on Question 1 protects our rights and meets our responsibilities.

We have the right to bear arms. And with rights come responsibilities, including the responsibility to keep guns out of the hands of felons, domestic abusers, and the severely mentally ill.

Question 1 won't stop all gun violence—nothing will. But in states that require criminal background checks for all handgun sales, almost 50% fewer police are killed with handguns[3] and about half as many women are shot to death by abusive partners.[4]

Since 1980, over 50% of police officers murdered with guns in the line of duty in Nevada were shot by people who would have likely failed a background check.[5]

There are more than 35,000 guns for sale in Nevada each year on just four websites—and no background check is required for most of these sales.[6] Question 1 closes these loopholes.

No Nevada tax dollars will be used to conduct Question 1 background checks because the checks will be run by the FBI.

The Nevada Association of Public Safety Officers and Las Vegas Fraternal Order of Police—representing thousands of law enforcement officers—urge yes on Question 1.[7]

Nevada doctors[8], crime victims[9], the Nevada Parent Teacher Association[10], and the Nevada State Education Association[11] all agree—passing Question 1 will help save lives.

We need to close this dangerous loophole and make sure criminal background checks are required on all gun sales in Nevada. Please vote yes on Question 1.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Background Checks; Justin Jones, private citizen; Elaine Wynn, Nevadans for Background Checks. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, including citations, can be found at www.nvsos.gov.

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18 U.S.C. § 922(g); Nev. Rev. Stat. § 202.360.

[2] 18 U.S.C. § 922(t).

[3] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Firearm Homicide Against Law Enforcement,* January 15, 2015, http://every.tw/1FpRqkh.

[4] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Rates of Domestic Violence Homicide,* January 15, 2015, http://every.tw/1y3kxCb.

[5] Everytown for Gun Safety Support Fund, *Nevada Law Enforcement Deaths and Illegal Guns,* November 9, 2015, http://every.tw/1q2kqck.

[6] Everytown for Gun Safety Support Fund, *The Wild Wild Web: Investigating Online Gun Markets in Nevada,* January 29, 2016, http://every.tw/26XLqeY.

[7] Letter from the Nevada Association of Public Safety Officers, January 12, 2016; and Letter from the Las Vegas Fraternal Order of Police.

[8] Letter from Nevadans for Background Checks; and Letter from the Nevada Public Health Association, April 19, 2016.
[9] Letter from Nevadans for Background Checks.
[10] Letter from Nevada Parent Teacher Association, February 2, 2016.
[11] Letter from the Nevada State Education Association, April 11, 2016.

REBUTTAL TO ARGUMENT FOR PASSAGE

Question 1 will do nothing to promote public safety. It is about destroying the Second Amendment freedoms of law-abiding Nevadans by out-of-state gun control groups.[1]

Criminals, by definition, do not obey laws.

U.S. Department of Justice statistics show that criminals obtain guns illegally--through straw-purchasers, theft, and the black market.[2] Question 1 does nothing to stop these methods of obtaining guns.

The supporters of Question 1 mislead Nevada voters by arguing that this initiative is about gun sales to violent criminals and the mentally ill. If this were about violent criminals and gun sales, supporters would have written the initiative to focus on sales, but they chose instead to cover all transfers, including those between friends and family.

Prohibiting someone from loaning a gun to a friend for an afternoon of target shooting or to go hunting – without a background check – will do nothing to stop violent crime. Rather, it advances another stated goal of gun control groups: establishing a federal registry of gun owners across America.

Supporters of Question 1 use self-generated statistics in their attempts to fool the public into ignoring the base, common-sense reality that criminals will not be dissuaded from violent crime if Question 1 passes.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Daniel Reid (Chair), NRA Nevadans for Freedom; Blayne Osborn, private citizen; Don Turner, Nevada Firearms Coalition. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This rebuttal, including citations, can be found at www.nvsos.gov.

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[1] Nevadans for Background Checks, Contributions and Expenses Report, Nevada Secretary of State web page available at: https://nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=xLkkWMf4XkrEVN%252bbfpbfTQ%253d%253d.
[2] *Special Report: Firearm Violence, 1993-2011,* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013, http://www.bjs.gov/content/pub/pdf/fv9311.pdf; *Guns Used in Crime,* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 1995,

http://www.bjs.gov/content/pub/pdf/GUIC.PDF; and *Following the Gun: Enforcing Federal Laws against Firearms Traffickers,* Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, June 2000, http://everytown.org/wp-content/uploads/2014/08/Following-the-Gun_Enforcing-Federal-Laws-Against-Firearms-Traffickers.pdf.

ARGUMENT AGAINST PASSAGE

Question 1 is not what its supporters claim it is and *goes well beyond sales to include loans, leases and gifts*. Imagine a soldier being required to run a background check on their fiancé or roommate just to store their firearms in anticipation of an upcoming deployment. That's exactly what this initiative will do. Or maybe you'd like to loan your firearm to a friend of 20 years to go target shooting on BLM land. Again, Question 1 would mandate that you run a background check on this trusted friend.

Question 1 goes even further than that. *If passed, this new law would require Nevadans to appear jointly at a federal firearms dealer who may charge a fee anytime they relinquish possession of a firearm and to have it returned*.[1] Failure to do so will constitute a serious crime and up to a year in prison. This complex, unenforceable, and overly burdensome change places more bureaucratic restrictions on law abiding citizens while not impacting criminals.

Under current law, federal firearms dealers are required to run a background check when selling a firearm regardless of where the transfer takes place.[2] Question 1 would expand this to include private transfers of a firearm, all to be conducted through a federal firearms dealer and subject to fees.[3] In the case of loaning a firearm to your friend for a target shooting trip, this would mean each of you making two separate trips to a federal firearms dealer and two separate fees just to loan and return the firearm.[4] There are no limits to the fees that can be charged for the two mandated trips.[5]

If supporters of Question 1 were truly interested in stopping crime, QUESTION 1 WOULD HAVE BEEN WRITTEN TO TARGET CRIMINAL ACTIVITY, NOT TO ENSNARE THE INNOCENT. Question 1 will expose law-abiding Nevadans to criminal penalties and burdensome costs without making our state any safer.

The supporters of Question 1 have given no regard to fixing the current system and focusing attention on criminals. During a 2014 hearing in the legislature, it was revealed that 800,000 criminal records were missing from the current state crime database.[6] Instead of addressing this obvious failure in the system, Question 1 targets law-abiding citizens and otherwise legal behavior.

Question 1 won't make Nevada safer. Laws that target criminals or criminal behavior are what reduce crime and promote public safety. Question 1 does neither.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Daniel Reid

(Chair), NRA Nevadans for Freedom; Blayne Osborn, private citizen; Don Turner, Nevada Firearms Coalition. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, including citations, can be found at www.nvsos.gov.

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[1] The Background Check Initiative.
[2] 18 U.S.C. § 922(t).
[3] The Background Check Initiative.
[4] Id.
[5] Id.
[6] *Report: Nevada repository missing thousands of criminal records,* Las Vegas Review Journal, June 20, 2014, http://www.reviewjournal.com/news/nevada/report-nevada-repository-missing-thousands-criminal-records.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

Opponents of Question 1 are trying to confuse voters, but Question 1 will make Nevada safer.

Background checks work, and they're convenient for law-abiding gun owners.

Over the last three years, background checks at Nevada gun dealers blocked 5,379 gun sales to criminals and other dangerous people who cannot legally buy guns, including felons, domestic abusers, and people with dangerous mental illness.[1]

But under current law, dangerous people can avoid background checks and buy guns from strangers they meet online or at gun shows, no questions asked.

Question 1 closes that loophole, requiring all gun sellers to play by the same rules.

Question 1 will help save lives. In states with background checks for all handgun sales, 48% fewer law enforcement officers are killed with handguns,[2] and 46% fewer women are shot to death by abusive partners.[3]

Background checks are quick and easy. 97.1% of Nevadans live within 10 miles of a gun dealer.[4] And over 90% of FBI background checks are completed on the spot.[5]

We have a right to bear arms and a responsibility to keep guns away from criminals, domestic abusers, and people with dangerous mental illness.

YES on Question 1 will make our communities safer.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Background Checks; Justin Jones, private citizen; Elaine Wynn, Nevadans for Background Checks. Pursuant to NRS 293.252(5)(f), the Committee does not believe the

measure will have any environmental impact. This rebuttal, including citations, can be found at www.nvsos.gov.

Everytown for Gun Safety Support Fund, *Gun Violence and Background Checks in Nevada*, August 27, 2015, https://everytownresearch.org/gun-violence-and-background-checks-in-nevada/.

[2] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Firearm Homicide against Law Enforcement*, January 15, 2015, http://every.tw/1FpRqkh.

[3] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Rates of Domestic Violence Homicide*, January 15, 2015, http://every.tw/1y3kxCb.

[4] Everytown for Gun Safety Support Fund analysis of U.S. Census data, May 2015. (There are 515 federally licensed gun dealers in Nevada able to conduct background checks on unlicensed sales. Bureau of Alcohol, Tobacco, Firearms and Explosives, data for type 1 and 2 FFL licenses in Nevada in May 2015, http://1.usa.gov/1JOixGK.)

[5] U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *2014 NICS Operations Report*, http://bit.ly/29YNKMh.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 1 proposes to amend various sections of the *Nevada Revised Statutes* to require that a background check be conducted by a licensed dealer before a firearm is transferred from one unlicensed person to another unlicensed person (private-party sales) under certain circumstances. Question 1 also establishes criminal penalties for violations of these provisions by unlicensed persons who sell or transfer firearms.

FINANCIAL IMPACT OF QUESTION 1

Pursuant to the provisions of the federal Brady Handgun Violence Prevention Act (Public Law 103-159), federally licensed firearm dealers are required to obtain a background check on an individual before a firearm may be purchased by that person. The law requires that the background check be conducted either directly through the National Instant Criminal Background Check System (NICS) maintained by the Federal Bureau of Investigation (FBI), or through a point of contact (POC) established within each state.

The Department of Public Safety has indicated that the Department's Criminal History Repository (CHR) serves as Nevada's POC based on the provisions of the Brady Act. As a result of this POC status, licensed firearm dealers contact the CHR to initiate background checks on retail firearm sales instead of contacting NICS directly. Currently, the CHR assesses a $25 fee for each background check that is conducted for this purpose.

The Department of Public Safety has indicated that passage of Question 1 would require a renegotiation of POC status or the development of an alternative agreement with the FBI in order to accommodate the provisions of the question. Based on this requirement, the Fiscal Analysis Division has identified three potential scenarios that could occur due to the implementation of Question 1:

1. If the agreement between the State and the FBI required the CHR to perform all background checks, it would result in additional expenditures of approximately $650,000 per year. However, the Department has estimated that the additional revenue that would be generated from the $25 fee imposed on the private-party background checks would be sufficient to defray these expenditures, which would result in no financial impact upon state government.

2. If the agreement between the State and the FBI allows licensed firearms dealers to contact NICS directly to conduct federal background checks for private-party sales, but allows the State to maintain POC status and continue to conduct background checks through the CHR for all other sales by licensed firearm dealers as is currently required by federal law, there would be no financial impact upon state government.

3. If the agreement between the State and the FBI removes Nevada's POC status under the Brady Act, licensed firearms dealers would be required to contact NICS directly to obtain background check information for retail and private-party sales rather than contacting the CHR. The Department has indicated that, if licensed dealers are required to access NICS directly for background checks on all gun sales, this would result in the elimination of approximately 13 positions and a loss in revenue of approximately $2.7 million per year, which is used to support the current operations of the CHR. This loss in revenue would result in a negative financial impact upon state government, as additional revenue would be required from the State General Fund or other sources to supplant revenues used to support the CHR's functions.

Because the Fiscal Analysis Division cannot determine what agreement may be reached between the Department and the FBI with respect to Nevada's status as a POC state under the Brady Act, the resultant financial impact upon state government cannot be determined with any reasonable degree of certainty.

The provisions creating misdemeanor and felony provisions for violations of the requirements of Question 1 may increase the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Department of Corrections, the Department of Public Safety, and the Fiscal Analysis Division are unable to determine the number of persons who may be investigated, prosecuted, or incarcerated as a result of violations of these provisions. Thus, the resultant financial effect upon state and local government cannot be determined with any reasonable degree of certainty.

The provisions creating misdemeanor and felony provisions for violations of the requirements of Question 1 will require two changes to the Nevada Offense Codes used in the CHR. The Department of Public Safety has indicated that these changes can be accommodated with existing staff, and that no additional financial impact would be incurred by the Department.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

THE BACKGROUND CHECK INITIATIVE

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section Sections 1 to 8, inclusive, of this act may be cited as The Background Check Act.

Sec. The People of Nevada do hereby find and declare that:

1. To promote public safety, federal law currently prohibits felons, domestic abusers, the severely mentally ill, and other dangerous people from buying or possessing firearms;

2. Federally licensed firearms dealers are required to run background checks on their prospective buyers to ensure they are not prohibited from buying or possessing firearms;

3. Criminals and other dangerous people can avoid background checks by buying guns from unlicensed firearms sellers, whom they can easily meet online or at gun shows and who are not legally required to run background checks before selling or transferring firearms;

4. Due to this loophole, millions of guns exchange hands each year in the United States without a background check;

5. The background check process is quick and convenient: Over 90% of federal background checks are completed instantaneously and over 97% of Nevadans live within 10 miles of a licensed gun dealer;

6. We have the right to bear arms, but with rights come responsibilities, including the responsibility to keep guns out of the hands of convicted felons and domestic abusers;

7. To promote public safety and protect our communities, and to create a fair, level playing field for all gun sellers, the people of Nevada find it necessary to more effectively enforce current law prohibiting dangerous persons from purchasing and possessing firearms by requiring background checks on all firearms sales and transfers, with reasonable exceptions, including for immediate family members, hunting, and self-defense.

Sec. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 6, inclusive, of this act.

Sec. ***As used NRS 202.254 and sections 4, 5 and 6 of this act, unless the context otherwise requires:***

1. "Central Repository" has the meaning ascribed to it in NRS 179A.045.

2. "Hunting" has the meaning ascribed to it in NRS 501.050.

3. "Licensed dealer" means a person who holds a license as a dealer in firearms issued pursuant to 18 U.S.C. § 923(a).

4. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

5. "Transferee" means an unlicensed person who wishes or intends to receive a firearm from another unlicensed person.

6. "Transferor" means an unlicensed person who wishes or intends to transfer a firearm to another unlicensed person.

7. "Trapping" has the meaning ascribed to it in NRS 501.090.

8. "Unlicensed person" means a person who does not hold a license as a dealer, importer, or manufacturer in firearms issued pursuant to 18 U.S.C. § 923(a).

Sec. ***The provisions of NRS 202.254 do not apply to:***

1. The sale or transfer of a firearm by or to any law enforcement agency and, to the extent he or she is acting within the course and scope of his or her employment and official duties, any peace officer, security guard entitled to carry a firearm under NAC 648.345, member of the armed forces, or federal official.

2. The sale or transfer of an antique firearm, as defined in 18 U.S.C. § 921(16).

3. The sale or transfer of a firearm between immediate family members, which for the purposes of this chapter means spouses and domestic partners and any of the following relations, whether by whole or half blood, adoption, or step-relation: parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews.

4. The transfer of a firearm to an executor, administrator, trustee, or personal representative of an estate or a trust that occurs by operation of law upon the death of the former owner of the firearm.

5. A temporary transfer of a firearm to a person who is not prohibited from buying or possessing firearms under state or federal law if such transfer:

(a) Is necessary to prevent imminent death or great bodily harm; and

(b) Lasts only as long as immediately necessary to prevent such imminent death or great bodily harm.

6. A temporary transfer of a firearm if:

(a) The transferor has no reason to believe that the transferee is prohibited from buying or possessing firearms under state or federal law;

(b) The transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime; and

(c) Such transfer occurs and the transferee's possession of the firearm following the transfer is exclusively:

(1) At an established shooting range authorized by the governing body of the jurisdiction in which such range is located;

(2) At a lawful organized competition involving the use of a firearm;

(3) While participating in or practicing for a performance by an organized group that uses firearms as a part of the public performance;

(4) While hunting or trapping if the hunting or trapping is legal in all places where the transferee possesses the firearm and the transferee holds all licenses or permits required for such hunting or trapping; or

(5) While in the presence of the transferor.

Sec. ***An unlicensed person who sells or voluntarily transfers one or more firearms to another unlicensed person in violation of NRS 202.254:***

1. For a first conviction involving the sale or transfer of one or more firearms, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140; and

2. For a second or subsequent conviction involving the sale or transfer of one or more firearms, is guilty of a category C felony and shall be punished as provided in NRS 193.130(2)(c).

Sec. NRS 202.254 is hereby amended to read as follows:

202.254 1. **[**~~A private person who wishes to transfer a firearm to another person may, before transferring the firearm, request that the Central Repository for Nevada Records of Criminal History perform a background check on the person who wishes to acquire the firearm.~~

~~2. The person who requests the information pursuant to subsection 1 shall provide the Central Repository with identifying information about the person who wishes to acquire the firearm.~~

~~3. Upon receiving a request from a private person pursuant to subsection 1 and the identifying information required pursuant to subsection 2, the Central Repository shall within 5 business days after receiving the request:~~

~~(a) Perform a background check on the person who wishes to acquire the firearm; and~~

~~(b) Notify the person who requests the information whether the information available to the Central Repository indicates that the receipt of a firearm by the person who wishes to acquire the firearm would violate a state or federal law.~~

~~4. If the person who requests the information does not receive notification from the Central Repository regarding the request within 5 business days after making the request, the person may presume that the receipt of a firearm by the person who wishes to acquire the firearm would not violate a state or federal law.~~

~~5. The Central Repository may not charge a fee for performing a background check and notifying a person of the results of the background check pursuant to this section.~~

~~6. A private person who transfers a firearm to another person is immune from civil liability for failing to request a background check pursuant to this section or for any act or omission relating to a background check requested pursuant to this section if the act or omission was taken in good faith and without malicious intent.~~

~~7. The Director of the Department of Public Safety may request an allocation from the Contingency Account pursuant to NRS 353.266, 353.268 and 353.269 to cover the costs incurred by the Department to carry out the provisions of subsection 5.]~~ ***Except as otherwise provided in section 5 of this act, an unlicensed person shall not sell or transfer a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee in compliance with this section.***

2. The seller or transferor and buyer or transferee shall appear jointly with the firearm and request that a licensed dealer conduct a background check on the buyer or transferee.

3. A licensed dealer who agrees to conduct a background check pursuant to this section shall take possession of the firearm and comply with all requirements of federal and state law as though the licensed dealer were selling or transferring the firearm from his or her own inventory to the buyer or transferee, including, but not limited to, all recordkeeping requirements, except that:

(a) The licensed dealer must contact the National Instant Criminal Background Check System, as described in 18 U.S.C. § 922(t), and not the Central Repository, to determine whether the buyer or transferee is eligible to purchase and possess firearms under state and federal law; and

(b) The seller or transferor may remove the firearm from the business premises while the background check is being conducted, provided that before the seller or transferor sells or transfers the firearm to the buyer or transferee, the seller or transferor and the buyer or transferee shall return to the licensed dealer who shall again take possession of the firearm prior to the completion of the sale or transfer.

4. A licensed dealer who agrees to conduct a background check pursuant to this section shall inform the seller or transferor and the buyer or transferee of the response from the National Instant Criminal Background Check System. If the response indicates that the buyer or transferee is ineligible to purchase or possess the firearm, the licensed dealer shall return the firearm to the seller or transferor and the seller or transferor shall not sell or transfer the firearm to the buyer or transferee.

5. A licensed dealer may charge a reasonable fee for conducting a background check and facilitating a firearm transfer between unlicensed persons pursuant to this section.

Sec. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. This act shall become effective on October 1, 2015, if approved by the legislature, or on January 1, 2017, if approved by the voters.