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SUMMARY OF COLORADO'S NEW GUN CONTROL LAWS

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You asked for a summary of Colorado's new gun control laws regarding background checks and large-capacity ammunition magazines.

SUMMARY

Colorado recently passed three new gun control laws. House Bill [13-1229](#) requires (1) universal background checks pursuant to the transfer of firearms, including private transfers, with several exceptions; (2) new mental health reporting; and (3) a judicial appeals process for individuals restricted from acquiring or possessing firearms. This law took effect upon passage, although the background check requirement does not begin until July 1, 2013.

House Bill [13-1228](#) requires the Colorado Bureau of Investigation (Bureau) to recoup the cost of performing an instant criminal background check by charging a background check fee. It also specifies how the state may establish the fee and handle and use revenue from it. It took effect upon passage.

Lastly, House Bill [13-1224](#) prohibits the sale, transfer, or possession of large-capacity ammunition magazines (more than 15 rounds), with certain exceptions. And it requires identification markings on all large-capacity magazines manufactured in Colorado after July 1, 2013, which is when the law takes effect.

UNIVERSAL BACKGROUND CHECKS (HB 13-1229)

Background Check Requirement

Under the new law, before any person who is not a licensed gun dealer transfers possession of a firearm, he or she must arrange for a licensed dealer to obtain the required background check. In obtaining the background check, the dealer must follow all procedures that it would follow were it transferring the firearm in a retail transaction, including recording the transfer, retaining the records, and complying with all state and federal laws. The dealer must provide a copy of the background check results and the Bureau's approval or disapproval to the transferor and intended transferee, and may charge a fee of up to \$10.

A prospective transferee may not accept possession of the firearm until after the transferor has obtained the Bureau's approval, nor may he or she knowingly provide false information to the transferor or licensed gun dealer for the purpose of acquiring a firearm. Bureau approval of a firearm transaction is valid for 30 calendar days. A person who transfers a firearm in violation of the law may be held jointly and severally liable for any civil damages caused by the transferee's subsequent use of the firearm.

Exemptions

The new law exempts from the background check requirement transfers:

1. of an antique firearm (18 U.S.C. § 921(a)(16)) or a curio or relic (27 C.F.R. § 478.11);
2. of a bona fide gift between immediate family members;
3. occurring (a) by operation of law or (b) because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created by a will;
4. of a temporary nature that occur in the home of an unlicensed transferee if he or she (a) is not prohibited from firearm possession and (b) reasonably believes that firearm possession is necessary to prevent imminent death or serious bodily injury to the transferee;

5. of possession that are temporary and that take place (a) at a shooting range that meets specific ownership requirements; (b) at an approved target shooting competition; or (c) while legally hunting, fishing, target shooting, or trapping;
6. made to facilitate the repair of a firearm as long as all parties possessing the firearm may do so legally;
7. of a temporary nature that occur while in the continuous presence of the owner of the firearm;
8. for up to 72 hours, during which time the transferor may be jointly and severally liable for damages caused by the transferee's unlawful use of the firearm; or
9. to any immediate family member from an armed services member who will be deployed outside the U.S. within the next 30 days.

The exceptions listed in the new law do not limit or alter the applicability of a different state law that prohibits the purchase or obtainment of a firearm on behalf of, or for transfer to, a person whom the transferor knows or reasonably should know is ineligible to possess a firearm under state or federal law (Colo. Rev. Stat. § 18-12-111).

Unless there is actual knowledge to the contrary, a (1) business that repairs firearms may rely on a transferor's statement that he or she may legally possess a firearm and (2) transferor may rely on the business's statement that no manager or employee is prohibited from firearm possession.

Penalties

A violation of the new background check law is a class 1 misdemeanor, which is punishable by six to 18 months imprisonment, a \$500 to \$5,000 fine, or both (Colo. Rev. Stat. § 18-1.3-501). Additionally, a person violating the law is prohibited from possessing a firearm for two years. The state court administrator must report any conviction related to such violation to the Bureau and the National Instant Criminal Background Check System (see below).

Mental Health

Reporting Requirements. The new law requires the state court administrator to send electronically to the Bureau the names of each person who has been, under court order: (1) found to be incapacitated,

(2) committed to a behavioral health treatment program (e.g., for substance abuse), or (3) involuntarily certified for short-term or long-term treatment and care for mental illness. The court administrator must send this information within 48 hours of notification.

If a court becomes aware that the basis for reporting such information does not apply or no longer applies, it must (1) update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system and (2) notify the attorney general.

Judicial Process for Relief. The new law creates a judicial process wherein a person may petition for relief from federal firearms prohibitions resulting from an adjudication as a “mental defective” or a commitment to a mental institution (18 U.S.C. § 922(d)(4) and (g)(4)). This new state judicial process was established pursuant to the federal NICS Improvement Act of 2007, which permits states to implement a program allowing people to petition for relief from certain federal firearms prohibitions, provided the state program meets specific criteria (Pub. L. [110-180, § 105](#), 18 U.S.C. § 922 note, (2008)).

In a state court proceeding, the petitioner can submit his or her own evidence. The court must review the evidence and maintain a record of the proceeding. The court must consider three factors:

1. the circumstances regarding the firearms prohibitions;
2. the petitioner’s mental health and criminal history records; and
3. the petitioner’s reputation, developed through character witness statements, testimony, or other character evidence.

To grant relief, the court must find that (1) the petitioner is not likely to act in a manner that is dangerous to public safety and (2) granting relief to him or her is not contrary to the public interest. If the court denies relief, the petitioner may appeal. The appeals court may, but is not required to, give deference to the lower court’s decision. It also has discretion to receive additional evidence necessary to conduct an adequate review.

INSTANT CRIMINAL BACKGROUND CHECK FEE (HB 13-1228)

House Bill 1228 directs the Bureau to impose a fee for performing an instant criminal background check pursuant to state law. The fee amount cannot exceed the total amount of direct and indirect costs the Bureau incurs in performing the check.

The Bureau must transmit the fees to the state treasurer, who must credit that money to a new instant criminal background check cash fund. The legislature can appropriate money from the fund for the direct costs of performing background checks. The treasurer may invest any unspent money; any interest and income derived from the investment must be credited to the fund. Unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and may not be credited to any other fund. If practicable, the Bureau must use any remaining funds to reduce the fee amount. The Bureau may contract with a public or private entity for fee collection services.

The Bureau must report annually to the legislative joint budget committee (1) the number of full-time employees used to perform background checks and (2) the calculations used to determine the fee amount.

The law also authorizes the Bureau to continue using general funds appropriated to the Bureau for FY14 to perform criminal background checks on a temporary basis until the earlier of (1) six months after the bill's effective date or (2) when sufficient money exists in the new fund to pay for the background checks.

According to the [Denver Post](#), it is estimated that the fee will be between \$10 and \$12.

PROHIBITION OF LARGE-CAPACITY AMMUNITION MAGAZINES (HB 13-1224)

Prohibition

House Bill 13-1224 prohibits the sale, transfer, or possession of large-capacity ammunition magazines or feeding devices, which includes:

1. a fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than 15 rounds of ammunition;

2. a fixed, tubular shotgun magazine that holds more than 28 inches of shotgun shells, including any extension device attached to the magazine that holds additional shotgun shells; or
3. a nontubular, detachable magazine, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

The following devices are not included in the ban:

1. a feeding device permanently altered so that it cannot accommodate more than 15 rounds of ammunition;
2. an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; or
3. a tubular magazine contained in a lever-action firearm.

Penalties

Table 1 details the penalties the state may impose if someone is convicted for violating this law.

Table 1: Penalties for Possession of Large-Capacity Ammunition Magazines

<i>Nature of violation</i>	<i>Criminal Classification</i>	<i>Penalties</i>	
		<i>Fine</i>	<i>Imprisonment</i>
First-time violation	Class 2 misdemeanor	\$250-\$1,000	3-12 months
Violation after a conviction for a prior violation	Class 1 misdemeanor	\$500-\$5,000	6-18 months
Violation during the commission of a felony or any violent crime	Class 6 felony	\$1,000-\$100,000	12-18 months, plus one year mandatory parole

Exemptions

Grandfather Clause. A person may possess a large-capacity magazine if he or she (1) owns the magazine on July 1, 2013 and (2) maintains continuous possession of the magazine. If a person asserts the grandfather provision as a defense against an alleged violation of the law, the prosecution has the burden of proof to refute the assertion.

Manufacturers and Licensed Gun Dealers. An entity that manufactures large-capacity magazines within Colorado, any licensed gun dealer, or employees of either, are not subject to the law if the transfer or sale is exclusively to:

1. a branch of the U.S. armed forces;
2. a department, agency, or political subdivision of any state, including Colorado, or the U. S. government;
3. a firearms retailer for the purpose of firearms sales conducted outside the state;
4. a foreign national government approved for such transfers by the U.S. government; or
5. an out-of-state transferee who may legally possess a large-capacity magazine.

Official Duties of Certain Employees. Employees of (1) a branch of the U.S. armed forces or (2) a department, agency, or political subdivision of any state, including Colorado, or the U.S. government who bear a firearm in the course of their official duties may possess a large-capacity magazine.

Transporters. A person who possesses a large-capacity magazine for the sole purpose of transporting the magazine to an out-of-state entity on behalf of a Colorado manufacturer of such magazines is also exempt from the law.

Identification Markings

The new law requires large-capacity magazines that are manufactured in Colorado on or after July 1, 2013 to include a permanent stamp or marking indicating when the magazine was manufactured or assembled. The stamp or marking must be legibly and conspicuously engraved or cast upon the outer surface of the magazine. Violation of this requirement is a class 2 misdemeanor.

The law authorizes the Bureau to promulgate rules needed to implement the requirement, such as requiring magazines to bear other identifying information in addition to the mandated identification markings.

HYPERLINKS

Ryan Parker, *The Denver Post*, Colorado Gun Bills: Background Check Fee Wins Initial Senate Approval,
http://www.denverpost.com/breakingnews/ci_22746907/colorado-gun-bills-senate-take-up-fees-background (March 8, 2013).

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