

HOUSE BILL REPORT

HB 1588

As Reported by House Committee On: Judiciary

Title: An act relating to requiring universal background checks for firearms transfers.

Brief Description: Requiring universal background checks for firearms transfers.

Sponsors: Representatives Pedersen, Hope, Jinkins, Hansen, Freeman, Kagi, Walsh, Carlyle, Hunter, Clibborn, Ormsby, Cody, Green, Stanford, Orwall, Maxwell, Lias, Pettigrew, Tharinger, Springer, Hudgins, Wylie, Moeller, Fitzgibbon, Ryu, Roberts, Goodman, Riccelli, Farrell, Fey, Appleton, Pollet, Habib, Bergquist, Moscoso, Hunt, Santos and Reykdal.

Brief History:

Committee Activity:

Judiciary: 2/13/13, 2/19/13 [DPS].

Brief Summary of Substitute Bill

- Requires a background check on the sale of a firearm when both the seller and purchaser are not licensed as dealers or collectors, unless the purchaser has a valid Washington concealed pistol license.
- Provides that the background check must be conducted by a dealer or a local law enforcement agency and consist of a check of the National Instant Criminal Background Check System.
- Provides exemptions for antique firearms, and curios and relics.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Goodman, Hope, Jinkins, Orwall and Roberts.

Minority Report: Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Kirby, Klippert, Nealey and Shea.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Edie Adams (786-7180).

Background:

Both state and federal law regulate the possession, purchase, and transfer of pistols. Federal and state law prohibit certain persons from possessing firearms, including persons convicted of felonies and some misdemeanor domestic violence offenses, minors, and persons who have been involuntarily committed for mental health treatment.

Under state and federal laws, "dealers" are required to have licenses in order to sell firearms. Under state law, a dealer includes anyone engaged in the business of selling firearms who has or is required to have a federal dealer's license. A person is not required to have a dealer's license in order to sell firearms if the person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

Federal Background Check Requirements.

Under the federal Brady Act, a dealer must, with few exceptions, conduct a background check to determine whether the purchaser is prohibited by state or federal law from possessing a firearm. This background check is conducted through the National Instant Criminal Background Check System (NICS).

The NICS check includes a check of three major databases: the Interstate Identification Index which maintains criminal history records; the National Crime Information Center, which includes data on persons subject to domestic violence protection orders, active criminal warrants, immigration violators, and others; and the NICS Index, which contains information contributed by state, local, tribal, and federal agencies relating to persons federally prohibited from possessing firearms. If the purchaser is not a United States citizen, the NICS check will include a check of the Bureau of Immigration and Customs Enforcement records.

A NICS check typically returns an immediate response. However, under federal law, if the NICS system response is delayed, the dealer may deliver the firearm to the purchaser three business days after initiating the NICS check if the dealer has not received a notification from NICS in that time that the purchaser is ineligible to possess a firearm.

State Background Check Requirements.

State law regulates the transfer of pistols by dealers, but does not regulate the transfer of long guns. The dealer contacts the local sheriff or police department to conduct the NICS check and a state background check for all pistol transfers where the purchaser does not have a valid concealed pistol license (CPL). If the purchaser has a valid CPL, local law enforcement will conduct a state background check, and the dealer will conduct the NICS check, if required.

A dealer may not deliver a pistol to a prospective purchaser until one of the following occurs:

- the purchaser produces a valid concealed pistol license;
- the dealer is notified by the chief of police or sheriff that the purchaser is eligible to possess the firearm and the application is approved; or

- five business days have elapsed since the application was received by the law enforcement agency (up to 60 days if the person does not have a Washington driver's license or has not resided in the state for the previous 90 days).

A dealer must deliver the pistol to the purchaser following the specified time periods unless the law enforcement agency has notified the dealer of an investigative hold.

Neither federal nor state law requires background checks for firearms transfers by persons who are not dealers. However, it is a class C felony for a person to transfer a firearm to another person whom he or she has reasonable cause to believe is ineligible to possess a firearm.

Summary of Substitute Bill:

An unlicensed person is prohibited from selling a firearm to another unlicensed person unless:

- the purchaser has undergone a background check and the background check indicates the person is eligible to possess a firearm under state and federal law; or
- the purchaser produces a valid Washington concealed pistol license (CPL).

A violation of this provision is a gross misdemeanor offense. "Unlicensed person" means a person who is not licensed as a dealer under state law, or federally licensed as a collector.

The seller must request a background check of the purchaser from a dealer or from the chief of police or sheriff of the jurisdiction where the seller or purchaser resides. The background check consists of a check of the National Instant Criminal Background Check System (NICS). The dealer or law enforcement agency may charge a fee of up to \$20 for conducting the NICS check.

The purchaser must complete and sign the federal firearms transaction record (ATF Form 4473), which must be provided to the dealer or the local law enforcement agency conducting the background check. The dealer or law enforcement agency must indicate on the ATF Form 4473 whether the person is eligible or ineligible to possess a firearm based on the results of the NICS check, and must record the NICS transaction number on the form. If the NICS system returns a delay response that is not resolved within three business days, the dealer or law enforcement agency must indicate that fact on the ATF Form 4473, and the seller may then transfer the firearm to the purchaser.

The seller may retain a copy of the ATF Form 4473 as proof of compliance with the background check requirement. If the purchaser produces a valid Washington CPL, the seller may retain a copy of the CPL, or the license number and other information on the CPL, as proof of compliance with the law. A dealer or local law enforcement agency conducting the background check may not retain a copy of the ATF Form 4473.

The act does not apply to the sale of antique firearms, or curios or relics as defined in federal law. The act also does not apply to, nor alter any state law requirements that apply to, the sale of a firearm by a dealer.

Substitute Bill Compared to Original Bill:

The original bill did not exempt persons who possess valid Washington concealed pistol licenses, persons federally licensed as collectors, or the sale of curios or relics. The original bill required the use of an application to transfer a firearm, rather than the ATF Form 4473, which was to be developed by the Department of Licensing (DOL) and include the same information required in the application to purchase a pistol from a dealer. The original bill did not address retention of the application by law enforcement or the DOL. The original bill did not address whether the sale of a firearm could proceed after a specified period of time if there was no resolution of a delayed response from the National Instant Criminal Background Check System.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2013.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is broad agreement that some people should not possess firearms, such as felons and involuntarily committed persons. Background checks are an effective mechanism to prevent these people from buying firearms. Tens of thousands of prohibited persons are prevented from purchasing firearms each year because of dealer background checks. However, dealer sales represent only 60 percent of firearms sales.

Law enforcement has long supported the right to possess firearms unless specifically prohibited. The only way we can know whether someone is prohibited is to create a background check process. The law is meaningless if prohibited persons can legally buy guns at gun shows or other private sales. If licensed dealers have to conduct background checks, we should require the same for non-dealers.

The impact of gun violence is devastating. Gun violence is a public health problem that we can solve like other public health problems. Guns in the hands of ineligible persons are the source of most of our gun violence. Enacting meaningful gun policies will help prevent factors that lead to gun violence. We have endured tragedies resulting from virtually unregulated access to firearms. The sanctity of human life and the obligation to not be indifferent to the bloodshed of our neighbors obligates us to take action. The proliferation of guns in our society is alarming. It is sad that people feel that security comes from guns.

There is a constitutional right to possess firearms but that right comes with conditions that support the basic right without being repressive. This bill gets us one step closer to what we all want: keeping guns out of the hands of felons and the mentally ill to help keep our communities safer. Polls indicate that the majority of Washington residents support background checks, including in households with National Rifle Association members. Background checks have worked in other states without stopping gun commerce.

(Opposed) This legislation goes far beyond what is reasonable. It is not about regulating private transactions; implicit in the bill is the creation of a registration database, which would also apply to rifles and shotguns. The bill puts too much power in the hands of the Department of Licensing to determine what is on the form. There is no time period when the transaction could go forward if the National Instant Criminal Background Check System (NICS) response is delayed or the system is not available.

The bill creates a huge regulatory scheme, and it has many problems that make it unworkable. It does not dovetail with federal or state law, and will have unintended consequences. Law enforcement will not be able to do these checks, so private parties will have to go through dealers, who will have to take the gun into inventory and comply with laws regulating transfers. Dealers currently charge \$30 to \$60 dollars to do this voluntarily, so the \$20 fee limitation could shut down private sales.

The bill will not reduce gun violence. Many of the mass shootings involved guns that have gone through a NICS check. It is already illegal for a felon to purchase a gun or for a person to sell to a known felon. The bill will not do anything to stop criminals from buying firearms. The government should enforce existing laws, not create new unenforceable laws that disproportionately affect law-abiding citizens.

The state constitution says that the right to bear arms in defense of self shall not be impaired. This bill infringes on that right and will limit the ability of domestic violence victims and others to defend themselves. America is a shining example of protecting personal freedoms and this bill jeopardizes that. Many people get their guns from their family and friends, and this bill will prevent that without having to go through a background check. It is a huge waste of resources to require the concealed pistol license holders to go through these background checks.

Persons Testifying: (In support) Representative Pedersen, prime sponsor; Don Pierce, Sheriffs and Police Chiefs Association; Nick Metz, Seattle Police Department; Cheryl Stumbo; Sofia Aragon, Washington State Nurses Association; David Fleming, Public Health of Seattle and King County; Beth Ebel, Harborview Injury Prevention Center; Pastor Kim Latterell; Reverend Sanford Brown; Rabbi Daniel Weiner, Temple De Hirsch; Beth Lynn, Washington Cease Fire; Pamela Van Swearington; and Mike Wilson, Washington Education Assembly.

(Opposed) Alan Gottlieb, Citizens Committee for the Right to Bear Arms; Brian Judy, National Rifle Association; Anton Rehling; Lynda Wilson; Kelsey Wilson; Dinah Griffey; Wayne Hager; Jacob Kukuh, Second Amendment Enforcers; James Williams, Pierce County Sportsmen's Council and Tacoma Sportsmen's Club; Carlos Ramos; Lowell Millard; Randall Bragge; and Jerry Gallard.

Persons Signed In To Testify But Not Testifying: Roger Philip Murray; Bill Murray; Jeff Roberts; Duane Dougal; Steven Aldrich; Jed Hannay; Terry Miller; Terry Schreder; Mark Miloscia, Washington State Catholic Conference; Michael Ramos, Church Council of Greater Seattle; Tate Beck, Milton Morris; Jem Goldsmith; David Reeder; P. Blais; Tim Turner; Tim Hall; Peter Heymann; Nick Smith; and Maxine Eilander, One Million Moms for Gun Control.