

SENATE BILL REPORT

SI 594

As of January 30, 2014

Title: Requiring criminal and public safety background checks for gun sales and transfers.

Brief Description: Gun sales background check.

Sponsors:

Brief History:

Committee Activity: Law & Justice: 1/29/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: A firearms dealer is a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license. A person who does not have, and is not required to have, a federal firearms license, is not a dealer if that 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 that person's personal collection of firearms.

A firearms dealer must not deliver a pistol to the purchaser thereof until: (1) the purchaser produces a valid concealed pistol license and the dealer records the purchaser's name, license number, and issuing agency; (2) the dealer is notified in writing by the chief of police or the sheriff of the jurisdiction in which the purchaser resides that the purchaser is eligible to possess a pistol and that the application to purchase is approved by the chief of police or sheriff; or (3) five business days elapse from the time of receipt of the application for the purchase by the chief of police or sheriff. If the purchaser does not have a valid permanent Washington driver license or state identification card, or has not been a resident of the state for the previous consecutive 90 days, the waiting period may be up to 60 days.

To determine whether the purchaser may possess a firearm, the chief of police or sheriff checks with the National Crime Information Center, the Washington State Patrol electronic database, the Department of Social and Health Services electronic database, and with other agencies or resources as appropriate. Dealers use the state system and national instant criminal background check system, provided for by the Brady Handgun Violence Prevention Act, to make criminal background checks of applicants to purchase firearms.

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.

Persons other than dealers are not required to perform background checks before selling or transferring firearms. It is, however, a class C felony to deliver a firearm to any person if there is reasonable cause to believe that the person is ineligible to possess a firearm.

Summary of Bill: All firearms sales or transfers, in whole or in part in this state, including without limitation a sale or transfer where either of the parties is in Washington, are subject to background checks unless specifically exempt by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, those through a licensed dealer, at gun shows, online, and between unlicensed persons.

No person may sell or transfer a firearm unless the person is a licensed dealer, the purchaser or transferee is a licensed dealer, or the transaction is completed through a licensed dealer. To complete a sale or transfer through a licensed dealer, the firearm is delivered to the dealer and the dealer processes the sale or transfer as if it is selling or transferring the firearm from its inventory. This includes compliance with all state and federal laws regarding background checks and recordkeeping. If the results of the background check indicate that the prospective purchaser or transferee is ineligible to possess a firearm, the dealer returns the firearm to the seller or transferor.

The seller may remove and possess the firearm while the background check is being conducted, but must return it to the licensed dealer for completion of the sale or transfer. The licensed dealer may charge a fee that reflects the fair market value of administrative costs and efforts.

The background check requirements do not apply to:

1. transfers between immediate family members if the transfer is a bona fide gift;
2. the sale or transfer of an antique firearm;
3. temporary transfers of possession when necessary to prevent imminent death or great bodily harm to the transferee if it is only for so long as necessary and the transferee is not prohibited from firearms possession;
4. law enforcement and corrections agencies and persons acting within their scope of employment at those agencies;
5. federally licensed gunsmiths for the purposes of service or repair;
6. temporary transfers:
 - a. between spouses or domestic partners;
 - b. at established shooting ranges;
 - c. for use at a lawful organized competition or by an organized group that uses firearms as part of their performance;
 - d. to a person under 18 years of age for lawful hunting, sporting, or educational purposes while under the supervision and control of a responsible adult; or
 - e. while legally hunting if the person has completed all training and holds the proper licenses and permits and is not prohibited from firearms possession; or
7. transfer to a person who acquires a firearm other than a pistol by operation of law upon the death of the former owner or who acquires a pistol by operation of law upon the death of the former owner within the preceding 60 days. After 60 days, the person must either have lawfully transferred the pistol or must have contacted the

Department of Licensing with notice that the person has possession of the pistol and intends to retain lawful possession of it.

A licensed dealer must not deliver any firearm until the earlier of: (1) receiving the results of the required background checks indicating that the person is not prohibited from firearm ownership; or (2) ten business days, instead of five under current law, have elapsed from the date the background check was requested. For pistols, if the purchaser or transferee does not have a valid Washington driver license or identification card or has not been a Washington resident for the previous 90 consecutive days, the time period is 60 days, same as current law. The requirement that pistols be delivered securely wrapped and unloaded is removed.

Residents of Washington may purchase rifles and shotguns in other states, but if any part of the transaction takes place in Washington, the Washington background check requirements apply. Residents of a state other than Washington may purchase rifles and shotguns in Washington subject to Washington background check provisions.

The Department of Licensing (DOL) is given rulemaking authority for implementation of chapter 9.41. RCW and the authority to revoke a Washington firearm dealer's license, after notice and hearing, if they are in violation of the chapter. A first violation of the background check provisions is a gross misdemeanor – up to 364 days and/or \$5,000. Subsequent violations are unranked class C felonies – up to one year RCW 9.94A.505(2)(b) and/or \$10,000. Each firearm is a separate offense.

State sales tax does not apply to transfers between unlicensed persons in compliance with the background check requirements or to licensed dealers facilitating firearms sales or transfers by conducting background checks.

Appropriation: None.

Fiscal Note: Requested on January 24, 2014.

Committee/Commission/Task Force Created: No.

Staff Summary of Public Testimony: PRO: Gun violence costs both the direct victims and all of society. Convicted felons should not be able to buy firearms. Store purchasers are subject to background checks, but the person could purchase a firearm over the Internet at home. The Initiative does not create a registry. A loan of a firearm is not a transfer. This will not stop firearm violence, but it will help. It is time to stop senseless violence. Similar policies are working in other states that have stricter requirements. This is a timely call to responsibility. The majority of suicides are by firearm. I-594 might create the needed delay that would help suicidal people reconsider their actions. Nobody has said that background checks are bad, so what is wrong with making them more complete. Background checks are just common sense measures to help reduce firearm violence. If we know something can cause harm and we fail to do nothing to prevent it, we are acting immorally.

CON: Severe mental illness causes most of the gun violence, even for those who passed a background check. This effort is really about universal gun registry for handguns. It will not prevent criminals from using straw purchasers. It is regulatory excess. The Initiative makes

it illegal to simply loan a firearm to a family member to go hunting without first doing a background check. Firearm transfers will be subject to the use tax. There are better ways to conduct background checks without violating a person's constitutional rights. There is no gun show loophole because firearms dealers must conduct background checks wherever they are. Criminals do not buy firearms at gun shows. I-594 overreaches and is a generational step toward firearm registration. It does not matter that this is a popular idea right now; constitutional rights should not be subject to political polls. This Initiative has many technical issues. I-594 will only affect law-abiding citizens. The DOL database is already inaccurate. The simple act of going shooting with friends and trading firearms would become a criminal act. This adversely impacts youth hunting. Firearms are often provided by instructors for training purposes, but this would make that illegal.

Persons Testifying: PRO: Tyra Lindquist, WA Coalition Against Domestic Violence; Linda Clifton, Anti-Defamation League; Asst. Chief Carmen Best, Seattle Police Dept.; Cheryl Stumbo, Rebecca Johnson, Bishop James Waggener, JoAnn Arlow, Heidi Yewman, Rabbi Seth Goldstein, Dr. Marylyn Berko, Barbara Hens-Turner, Stacy Anderson, Rabbi Bruce Yodden, Jasmit Singh, Cheryl Berenson, citizens.

CON: Alan Gottlieb, Protect Our Guns; Brian Judy, National Rifle Assn.; Phil Shave, Retired Law Enforcement Officer; Annette Wachter, U.S. Rifle Team; Ed Owens, Hunter's Heritage Council; Joe Waldron, Gun Owner's Action League; Rodger Phillip Murray, Wildlife Committee of WA; Boyd Kneeland, WA Arms Collectors, Snoqualmie Valley Pistol Club; Richard King, Jr., 2nd enforcers; David Carnahan, Military and Police for Public Safety; Marty Hayes, Firearms Academy Seattle; Barron Barnett, Dustin Reischman, Ray Carter, Kevin Cobden, Jacob Kukuk, Erik Nervik, Lowell Millard, William Smith, Jim Goldsmith, Rod Schenk, Patricia Johnson, William McNally, Jim Adsley, citizens.