H-4186.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE HOUSE BILL 2467**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Hansen, Irwin, Griffey, Barkis, and Wylie)

AN ACT Relating to establishing a centralized single point of contact background check system for firearms transfers; amending RCW 9.41.114, 43.43.823, 36.28A.405, and 36.28A.420; adding new sections to chapter 43.43 RCW; adding a new section to chapter 9.41 RCW; repealing RCW 36.28A.400; and providing a contingent effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 43.43 RCW to read as follows:

(1) The Washington state patrol shall establish a firearms background check unit to serve as a centralized single point of contact for dealers to conduct background checks for firearms sales or transfers required under chapter 9.41 RCW and the federal Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.). The Washington state patrol shall establish an automated firearms background check system to conduct background checks on applicants for the purchase or transfer of a firearm. The system must include the following characteristics:

(a) Allow a dealer to contact the Washington state patrol through a web portal or other electronic means and by telephone to request a background check of an applicant for the purchase or transfer of a firearm;

(b) Provide a dealer with a notification that a firearm purchase or transfer application has been received;

(c) Assign a unique identifier to the background check inquiry;

(d) Provide an automated response to the dealer indicating whether the transfer may proceed or is denied, or that the check is indeterminate and will require further investigation;

(e) Include measures to ensure data integrity and the confidentiality and security of all records and data transmitted and received by the system; and

(f) Include a performance metrics tracking system to evaluate the performance of the background check system.

(2) Upon receipt of a request from a dealer for a background check in connection with the sale or transfer of a firearm, the Washington state patrol shall:

(a) Provide the dealer with a notification that a firearm transfer application has been received;

(b) Conduct a check of the national instant criminal background check system and the following additional records systems to determine whether the transferee is prohibited from possessing a firearm under state or federal law: (i) The Washington crime information center and Washington state identification system; (ii) the health care authority electronic database; (iii) the federal bureau of investigation national data exchange database and any available repository of statewide local law enforcement record management systems information; (iv) the administrative office of the courts case management system; and (v) other databases or resources as appropriate;

(c) Perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if the applicant has been convicted as defined in RCW 9.41.040(3) and if the offense is equivalent to a Washington felony as defined in RCW 9.41.010(8);

(d) Notify the dealer without delay that the records indicate the individual is prohibited from possessing a firearm and the transfer is denied or that the individual is approved to complete the transfer. If the results of the background check are indeterminate, the Washington state patrol shall notify the dealer of the delay and conduct necessary research and investigation to resolve the inquiry; and

(e) Provide the dealer with a unique identifier for the inquiry.

(3) The Washington state patrol may hold the delivery of a firearm to an applicant under the circumstances provided in RCW 9.41.090 (4) and (5).

(4) The Washington state patrol shall require a dealer to charge each firearm purchaser or transferee a fee for performing background checks in connection with firearms transfers. The fee must be set at an amount necessary to cover the annual costs of operating and maintaining the firearm background check system but shall not exceed eighteen dollars. The Washington state patrol shall transmit the fees collected to the state treasurer for deposit in the state firearms background check system account created in section 3 of this act. It is the intent of the legislature that once the state firearm background check system is established, the fee established in this section will replace the fee required in RCW 9.41.090(7).

(5) The Washington state patrol shall establish a procedure for a person who has been denied a firearms transfer as the result of a background check to appeal the denial to the Washington state patrol and to obtain information on the basis for the denial and procedures to review and correct any erroneous records that led to the denial.

(6) The Washington state patrol shall work with the administrative office of the courts to build a link between the firearm background check system and the administrative office of the courts case management system for the purpose of accessing court records to determine a person's eligibility to possess a firearm.

(7) Upon establishment of the firearm background check system under this section, the Washington state patrol shall notify each dealer in the state of the existence of the system, and the dealer must use the system to conduct background checks for firearm sales or transfers beginning on the date that is thirty days after issuance of the notification.

(8) The Washington state patrol shall consult with the Washington background check advisory board created in section 2 of this act in carrying out its duties under this section.

(9) All records and information prepared, obtained, used, or retained by the Washington state patrol in connection with a request for a firearm background check are exempt from public inspection and copying under chapter 42.56 RCW.

(10) The Washington state patrol may adopt rules necessary to carry out the purposes of this section.

(11) For the purposes of this section, "dealer" has the same meaning as given in RCW 9.41.010.

NEW SECTION. **Sec.**  A new section is added to chapter 43.43 RCW to read as follows:

(1) There is created the Washington background check advisory board. The board shall consist of the following members, appointed by the governor:

(a) The chief of the Washington state patrol or the chief's designee;

(b) The executive director of the Washington association of sheriffs and police chiefs or the executive director's designee;

(c) One sheriff;

(d) One police chief;

(e) One person engaged in the business of lawfully selling firearms at retail in this state who holds a federal firearms license under 18 U.S.C. Sec. 923(a);

(f) One representative of an organization known to actively advocate in this state on behalf of firearms rights;

(g) One representative of an organization known to actively advocate in this state on behalf of greater firearm regulation; and

(h) One member of the general public.

(2) The primary purpose of the board is to ensure that the Washington state patrol firearms background check unit established in section 1 of this act is administered efficiently and effectively, and in a manner that honors individual firearms rights while preventing prohibited persons from obtaining firearms.

(3) The board shall initially convene within ninety days of the effective date of this section, and shall meet not less than monthly until such time that the Washington state patrol deems the firearms background check unit is operational. After the Washington state patrol deems the firearms background check unit is operational, the board shall meet quarterly, unless the board has no business to conduct during that quarter.

(4) The board shall elect from among its membership a chairperson and other such officers from among its membership as it deems appropriate.

(5) Members of the board shall serve terms of four years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

(6) The board shall:

(a) Provide input and feedback regarding the establishment and operation of the firearms background check unit established in section 1 of this act;

(b) Be actively involved in the preparation of the firearms background check unit budget prior to its formal submission to the office of financial management pursuant to RCW 43.88.030;

(c) Be consulted with prior to the proposal of any rule relating to the firearms background check unit and prior to the adoption of any rule relating to the firearms background check unit;

(d) Require reports from the chief of the Washington state patrol on matters pertaining to the firearms background check unit; and

(e) Report to the governor and appropriate committees of the legislature on or before December 31st of each year on the activities of the board and the firearms background check unit for the preceding fiscal year.

(7) Members of the board shall serve without compensation, but shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(8) The Washington state patrol shall provide the staffing and budgetary resources necessary for the board to properly fulfill its duties.

(9) Members serving in their official capacity on the Washington background check advisory board, or either their employer or employers or other entity that selected the members to serve, are immune from a civil action based on an act performed in good faith.

NEW SECTION. **Sec.**  A new section is added to chapter 43.43 RCW to read as follows:

The state firearms background check system account is created in the custody of the state treasurer. All receipts under section 1 of this act must be deposited into the account. Expenditures from the account may be used only for the creation, operation, and maintenance of the automated firearms background check system under section 1 of this act. Only the chief of the Washington state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  A new section is added to chapter 9.41 RCW to read as follows:

(1) Beginning on the date that is thirty days after the Washington state patrol issues a notification to dealers that a state firearms background check system is established within the Washington state patrol under section 1 of this act, a dealer shall use the state firearms background check system to conduct background checks for all firearms transfers. A dealer may not sell or transfer a firearm to an individual unless the dealer first contacts the Washington state patrol for a background check to determine the eligibility of the purchaser or transferee to possess a firearm under state and federal law and the requirements and time periods established in RCW 9.41.090 and 9.41.092 have been satisfied. When an applicant applies for the purchase or transfer of a pistol or semiautomatic assault rifle, a dealer shall comply with all requirements of this chapter that apply to the sale or transfer of a pistol or semiautomatic rifle. The purchase or transfer of a firearm that is not a pistol or semiautomatic assault rifle must be processed in the same manner and under the same requirements of this chapter that apply to the sale or transfer of a pistol, except that the provisions of RCW 9.41.129, and the requirement in RCW 9.41.110(9)(b) concerning transmitting application records to the director of licensing, shall not apply to these transactions.

(2) A dealer shall charge a purchaser or transferee a background check fee in an amount determined by the Washington state patrol and remit the proceeds from the fee to the Washington state patrol on a monthly basis.

(3) This section does not apply to sales or transfers to licensed dealers or to the sale or transfer of an antique firearm.

**Sec.**  RCW 9.41.114 and 2017 c 261 s 1 are each amended to read as follows:

((~~(1) A dealer shall report to the Washington association of sheriffs and police chiefs information on each instance where the dealer denies an application for the purchase or transfer of a firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements of federal law, as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law. The dealer shall report the denied application information to the Washington association of sheriffs and police chiefs within five days of the denial in a format as prescribed by the Washington association of sheriffs and police chiefs. The reported information must include the identifying information of the applicant, the date of the application and denial of the application, and other information or documents as prescribed by the Washington association of sheriffs and police chiefs. In any case where the purchase or transfer of a firearm is initially denied by the dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the dealer shall report the subsequent approval to the Washington association of sheriffs and police chiefs within one day of the approval.~~

~~(2)~~)) Upon denying an application for the purchase or transfer of a firearm as a result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law, the dealer shall:

((~~(a)~~)) (1) Provide the applicant with a copy of a notice form generated and distributed by the Washington state patrol under RCW 43.43.823((~~(5)~~)) (6), informing denied applicants of their right to appeal the denial; and

((~~(b)~~)) (2) Retain the original records of the attempted purchase or transfer of a firearm for a period not less than six years.

**Sec.**  RCW 43.43.823 and 2018 c 22 s 11 are each amended to read as follows:

(1) ((~~Upon receipt of the information from the Washington association of sheriffs and police chiefs pursuant to RCW 36.28A.400, the~~)) The Washington state patrol shall report each instance where an application for the purchase or transfer of a firearm is denied as the result of a background check that indicates the applicant is ineligible to possess a firearm to the local law enforcement agency in the jurisdiction where the attempted purchase or transfer took place. The reported information must include the identifying information of the applicant, the date of the application and denial of the application, the basis for the denial of the application, and other information deemed appropriate by the Washington state patrol.

(2) The Washington state patrol must incorporate the information concerning any person whose application for the purchase or transfer of a firearm is denied as the result of a background check into its electronic database accessible to law enforcement agencies and officers, including federally recognized Indian tribes, that have a connection to the Washington state patrol electronic database.

((~~(2)~~)) (3) Upon ((~~receipt of documentation that a person has appealed~~)) appeal of a background check denial, the Washington state patrol shall immediately remove the record of the person ((~~initially reported pursuant to RCW 36.28A.400~~)) from its electronic database accessible to law enforcement agencies and officers. The Washington state patrol must keep a separate record of the person's information for a period of one year or until such time as the appeal has been resolved. Every twelve months, the Washington state patrol shall notify the person that the person must provide documentation that his or her appeal is still pending or the record of the person's background check denial will be put back in its electronic database accessible to law enforcement agencies and officers. At any time, upon receipt of documentation that a person's appeal has been granted, the Washington state patrol shall remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

((~~(3)~~)) (4) Upon receipt of satisfactory proof that a person ((~~who was reported to the Washington state patrol pursuant to RCW 36.28A.400~~)) is no longer ineligible to possess a firearm under state or federal law, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

((~~(4) Upon receipt of notification from the Washington association of sheriffs and police chiefs that a person originally denied the purchase or transfer of a firearm as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law has subsequently been approved for the purchase or transfer, the~~)) (5) In any case where the purchase or transfer of a firearm is initially denied as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers within five business days and report the subsequent approval to the local law enforcement agency that received notification of the original denial.

((~~(5)~~)) (6) The Washington state patrol shall generate and distribute a notice form to all firearm dealers, to be provided by the dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. The notice form must contain the following statements:

State law requires that ((~~I~~)) the Washington state patrol transmit the following information to the ((~~Washington association of sheriffs and police chiefs~~)) local law enforcement agency as a result of your firearm purchase or transfer denial within five days of the denial:

(a) Identifying information of the applicant;

(b) The date of the application and denial of the

application;

(c) The basis for the denial; and

(d) Other information as ((~~prescribed~~)) determined by the Washington ((~~association of sheriffs and police chiefs~~)) state patrol.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal investigation by the Washington state patrol and/or a local law enforcement agency.

The notice form shall also contain information directing the applicant to a web site describing the process of appealing a ((~~national instant criminal~~)) background check system denial ((~~through the federal bureau of investigation~~)) and refer the applicant to ((~~local law enforcement~~)) the Washington state patrol for information on a denial based on a state background check. The notice form shall also contain a phone number for a contact at the Washington state patrol to direct the person to resources regarding an individual's right to appeal a background check denial.

((~~(6)~~)) (7) The Washington state patrol shall provide to the Washington association of sheriffs and police chiefs any information necessary for the administration of the grant program in RCW 36.28A.420, providing notice to a protected person pursuant to RCW 36.28A.410, or preparation of the report required under RCW 36.28A.405.

(8) The Washington state patrol may adopt rules as are necessary to carry out the purposes of this section.

**Sec.**  RCW 36.28A.405 and 2017 c 261 s 4 are each amended to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall prepare an annual report on the number of denied firearms sales or transfers reported pursuant to chapter 261, Laws of 2017 and RCW 43.43.823. The report shall indicate the number of cases in which a person was denied a firearms sale or transfer, the number of cases where the denied sale or transfer was investigated for potential criminal prosecution, and the number of cases where an arrest was made, the case was referred for prosecution, and a conviction was obtained. The Washington ((~~state patrol~~)) association of sheriffs and police chiefs shall submit the report to the appropriate committees of the legislature on or before December 31st of each year.

**Sec.**  RCW 36.28A.420 and 2017 c 261 s 6 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall establish a grant program for local law enforcement agencies to conduct criminal investigations regarding persons who illegally attempted to purchase or transfer a firearm within their jurisdiction.

(2) Each grant applicant must be required to submit reports to the Washington association of sheriffs and police chiefs that indicate the number of cases in which a person was denied a firearms sale or transfer, the number of cases where the denied sale or transfer was investigated for potential criminal prosecution, and the number of cases where an arrest was made, the case was referred for prosecution, and a conviction was obtained.

(3) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs pursuant to chapter 261, Laws of 2017 and RCW 43.43.823 are exempt from public inspection and copying under chapter 42.56 RCW.

NEW SECTION. **Sec.**  RCW 36.28A.400 (Denied firearm transaction reporting system—Purge of denial records upon subsequent approval—Public disclosure exemption—Destruction of information) and 2017 c 261 s 2 are each repealed.

NEW SECTION. **Sec.**  Sections 5 through 9 of this act take effect on the date that is thirty days after the Washington state patrol issues a notification to dealers that a state firearms background check system is established under section 1 of this act. The Washington state patrol shall provide written notice of the effective date of sections 5 through 9 of this act to the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the Washington state patrol.

**--- END ---**