

HOUSE BILL REPORT

EHB 1465

As Passed Legislature

Title: An act relating to requirements for pistol sales or transfers.

Brief Description: Concerning requirements for pistol sales or transfers.

Sponsors: Representatives Goodman, Jinkins and Santos.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/15/19, 2/20/19 [DP].

Floor Activity:

Passed House: 3/12/19, 59-35.

Senate Amended.

Passed Senate: 4/17/19, 27-21.

House Concurred.

Passed House: 4/23/19, 56-40.

Passed Legislature.

Brief Summary of Engrossed Bill

- Removes a provision allowing a dealer to deliver a pistol to a purchaser who produces a valid concealed pistol license prior to the completion of a state background check.
- Expires the provisions of the bill the earlier of June 30, 2022, or six months after the date on which the Washington State Patrol determines that a single point of contact firearm background check system is operational in the state.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 4 members: Representatives Dufault, Assistant Ranking Minority Member; Graham, Shea and Ybarra.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Klippert.

Staff: Edie Adams (786-7180).

Background:

Firearms dealers must be licensed under both federal and state law and must comply with federal and state law when making firearms transfers. Licensed firearms dealers are required by federal law and state law to conduct background checks on prospective firearm purchasers to determine whether the purchaser is eligible to possess a firearm.

Federal Law. Under the federal Brady Handgun Violence Prevention Act, a licensed dealer must, with few exceptions, conduct a background check on all firearms transfers 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 National Crime Information Center; the Interstate Identification Index; and the NICS index. 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.

When the NICS became operational in 1998, the Federal Bureau of Investigation (FBI) requested each state to designate themselves as either a full point of contact (POC) state (also called single POC), a partial POC state, or a non-POC state. Washington opted to act as a partial POC state, which means that the NICS check for handgun transfers is conducted by the state and the NICS check for long gun transfers is conducted by the firearms dealer. Local law enforcement agencies were given the responsibility of serving as the partial POC for licensed dealers in conducting the NICS checks for handgun transfers.

State Law. Under state law, a licensed firearms dealer may not deliver a pistol to a prospective purchaser until one of the following occurs:

- the purchaser produces a valid concealed pistol license (CPL);
- 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
- 10 business days have elapsed since the application was received by the law enforcement agency (except this time period may be extended for up to 30 days when the purchaser's record lacks certain disposition information, or up to 60 days if the purchaser has no Washington driver's license or identification card, or has not lived in the state for the previous 90 days).

The local law enforcement agency conducting the background check for a pistol transfer is required to conduct a NICS check and to check state databases, including the Washington State Patrol databases, the Department of Licensing (DOL) firearms database, and state and local mental health agencies in order to determine whether the purchaser is eligible to possess a firearm under state law.

In practice, the procedures for conducting background checks for pistols differ depending on whether or not the purchaser has a valid CPL. If the purchaser does not have a CPL, the

dealer contacts the local sheriff or police department to conduct the NICS check and the state background check. If the purchaser has a valid CPL, the dealer will conduct a NICS check and the local law enforcement agency will conduct the required state background check.

The FBI recently conducted a review of full POC and partial POC background check processing to determine whether states are processing background checks appropriately. In 2018 the FBI notified Washington that it is not serving as a partial POC on all required firearms transfers. The FBI indicated that the NICS Section will stop processing NICS background checks for these transfers, but has delayed this change until the state revises its laws governing these transfers, or June 30, 2019, whichever occurs first.

Summary of Engrossed Bill:

The provision allowing a dealer to transfer a pistol to a purchaser who produces a valid concealed pistol license is removed. For all pistol transfers, the dealer may not transfer the pistol to the purchaser until either:

- 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
- 10 business days have elapsed since the application was received by the law enforcement agency. This time period may be extended for up to 30 days when the purchaser's record lacks certain disposition information, or up to 60 days if the purchaser has no Washington driver's license or identification card, or has not lived in the state for the previous 90 days.

The changes in the bill expire on the earlier of June 30, 2022, or six months after the date on which the Washington State Patrol (WSP) determines that a single point of contact firearm background check system is operational in the state. If the bill expires based on a single point of contact system becoming operational in the state, the WSP must provide written notice of the expiration of the bill 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2019.

Staff Summary of Public Testimony:

(In support) The policy change in this bill is driven by a federal decision that is being imposed on the state. The Federal Bureau of Investigation (FBI) is discontinuing a long practice of allowing courtesy National Instant Criminal Background Check System (NICS) checks when a pistol purchaser has a concealed pistol license (CPL). This allows CPL holders to walk out of the shop with a pistol the same day because a NICS check has been completed. This bill is necessary because the FBI will no longer allow those courtesy checks. Concealed pistol license holders will now have to wait for the local law enforcement background check before the dealer can transfer the pistol. The state is looking to establish a

single point of contact (POC) system, but it is not yet available and the FBI denied the state's request to delay implementation of this change. This is a practical issue that has to be dealt with this session.

A background check is absolutely necessary before transferring a firearm, so the law has to be changed. There is no real-time database that would allow a dealer to determine the validity of a CPL. The CPL holder could have become ineligible after issuance of the CPL, and CPLs can be easily duplicated or forged. Not conducting a background check before transferring a firearm is not good public safety policy. Passing this bill is the right choice.

(Opposed) This bill is in response to an unfortunate change in policy from the FBI. There are 600,000 CPL holders in Washington, and by definition they are not felons and they do not have disqualifying protection orders. This bill will create an unnecessary burden on these law abiding citizens. The need for this bill is an admission from the state that it is not doing its job of removing CPLs from people who have become ineligible after their licenses were issued. There needs to be a long-term solution for this problem.

The CPL check is the most in-depth background check because it is fingerprint based. A better solution to the problem would be to establish a single POC system which would be a money saver for the state and take the burden off of local law enforcement agencies. A second option would be for the state to create a process to automatically and electronically address the CPL revocation issue. The real problem with the state's firearms laws is how complicated they are. There are many firearms bills being considered that interfere with the constitutional and inalienable rights of citizens.

Persons Testifying: (In support) Representative Goodman, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; and Monica Alexander, Washington State Patrol.

(Opposed) Tom Kwieciak, National Rifle Association; Gregory Patnude; and Phil Watson, Firearms Policy Coalition.

Persons Signed In To Testify But Not Testifying: None.