

HOUSE BILL REPORT

HB 1731

As Reported by House Committee On: Judiciary

Title: An act relating to background checks for firearms sales or transfers, but only with respect to clarifying that the term firearm does not include flare guns and construction tools, clarifying that the term transfer does not include transfers between an employer and employee for lawful purposes in the ordinary course of business, expanding the family member exemption to include loans and parents-in-law and siblings-in-law, providing an exemption for temporary transfers for the purpose of preventing suicide or self-inflicted great bodily harm, and providing an exemption for temporary transfers where the transferee and the firearm are in the presence of the transferor.

Brief Description: Concerning firearms sales and transfers.

Sponsors: Representatives Jinkins, Rodne, Senn, Stokesbary and Tharinger.

Brief History:

Committee Activity:

Judiciary: 2/7/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Makes changes with respect to background check requirements for firearms sales or transfers.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

Staff: Edie Adams (786-7180).

Background:

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.

Both federal and state law regulate the possession and transfer of firearms. Firearms dealers (dealers) are required to have licenses in order to sell firearms and must comply with both federal and state background check requirements before transferring firearms to persons who do not have a federal firearms license.

Federal Background Check Requirements. Under the federal Brady Handgun Violence Prevention Act, a dealer must, with few exceptions, conduct a background check for all firearm sales or transfers to private persons to determine whether the purchaser is prohibited from possessing a firearm. This background check is conducted through the National Instant Criminal Background Check System (NICS).

State Background Check Requirements. All firearms sales or transfers are subject to background checks unless specifically exempted by federal or state law, including sales and transfers through a dealer, at gun shows, online, and between private persons. "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment, including gifts and loans. "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive, such as gunpowder.

A pistol purchaser must undergo a state background check in addition to the federal NICS check. A state background check includes a check of the Washington State Patrol databases, the Department of Licensing firearms database, and state and local mental health agencies.

Under Initiative 594, adopted by the voters in 2014, any sale or transfer of a firearm where neither party is a dealer must be completed through a dealer. The purchaser or transferee must complete and sign all federal, state, and local forms needed for processing the background check. The dealer must process the transaction by complying with all federal and state laws that would apply if the dealer were selling or transferring the firearm from the dealer's inventory, including conducting required background checks of purchasers or transferees.

There are a number of exemptions from the background check requirement under Initiative 594. One exemption applies to bona fide gifts between immediate family members, which are limited to spouses, domestic partners, parents, children, siblings, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles. Another exemption authorizes a temporary transfer where: the transfer is necessary to prevent imminent death or great bodily harm to the transferee; the transfer lasts only as long as immediately necessary; and the transferee is not prohibited from possessing firearms.

Summary of Substitute Bill:

Definitions.

Definitions for the terms "firearm" and "transfer" are revised in the chapter of law regulating firearms. The term "firearm" does not include a flare gun or other pyrotechnic visual distress signaling system or a powder-actuated tool or other device designed solely to be used for construction purposes. The term "transfer" does not include the delivery of a firearm owned

or leased by an employer to, or return of that firearm by, any of the employer's employees for lawful purposes in the ordinary course of business.

Exemptions from Background Check Requirements.

The exemption for bona fide gifts between immediate family members is revised to include loans between immediate family members. For the purposes of this exemption, the term "immediate family member" is revised to include parents-in-law and siblings-in-law.

Two additional exemptions from required background checks are established. A temporary transfer of a firearm is exempt under circumstances in which the transferee and the firearm remain in the presence of the transferor.

In addition, a temporary transfer of a firearm is exempt if:

- the transfer is intended to prevent suicide or self-inflicted great bodily harm;
- the transfer lasts only as long as reasonably necessary to prevent death or great bodily harm; and
- the transferee does not use the firearm for any purpose for the duration of the temporary transfer.

Substitute Bill Compared to Original Bill:

The exemption for temporary transfers intended to prevent suicide or great bodily harm is revised to require that the transferee not use the firearm for any purpose for the duration of the transfer and to remove a requirement of imminence with respect to the duration of the transfer.

Appropriation: None.

Fiscal Note: Not requested.

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) Initiative 594 has been working very well, but there have been concerns in some areas. This bill will provide clarity to the public about the intent of the bill. The bill pushes some stakeholders farther than they want to go and does not go as far as others want to go, but it is important to have an agreed-upon bill.

This legislation is important for security guard companies that often have a firearms lease arrangement for their armed guards. The bill clarifies that these transfers in the course of employment are not subject to background check requirements. The language allowing temporary transfers for suicide prevention is extremely important and is the result of hard work among suicide prevention stakeholders. It is critical to remove access to firearms when

someone is at risk and showing warning signs of suicide. One of the best practices in suicide prevention was made illegal by Initiative 594, and we need to fix that.

(Opposed) None.

(Other) The amendment removes concerns with the underlying bill's exemption relating to suicide prevention. The amendment adopts language that was developed by National Rifle Association attorneys and others and is agreed upon by the task force on suicide prevention. The bill should go further to address other flaws in Initiative 594.

When Initiative 594 passed, it created a conflict by omission in state and federal law relating to curios and relics. Concealed pistol license holders are not given the same standing as security guards even though they have undergone the same background checks.

Persons Testifying: (In support) Representative Jenkins, prime sponsor; Michael Transue, Pierce County Security; Rebecca Johnson, Alliance for Gun Responsibility; and Jennifer Stuber, Forefront.

(Other) Tom Kweciak, National Rifle Association; and Phil Watson, Firearms Policy Commission.

Persons Signed In To Testify But Not Testifying: None.