

HOUSE BILL REPORT

SHB 2555

As Passed Legislature

Title: An act relating to background check requirements for firearms classified as other under federal firearms laws.

Brief Description: Concerning background check requirements for firearms classified as other under federal firearms laws.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representative Goodman).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/22/20, 1/31/20 [DPS];

Appropriations: 2/8/20, 2/10/20 [DPS(CRJ)].

Floor Activity:

Passed House: 2/18/20, 56-42.

Passed Senate: 3/6/20, 28-20.

Passed Legislature.

Brief Summary of Substitute Bill

- Requires firearms dealers to conduct background checks on applicants for the purchase or transfer of a firearm frame or receiver once a state background check system is established within the Washington State Patrol, and establishes procedures and requirements applicable to these transfers.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Klippert, Rude 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 2 members: Representatives Dufault, Assistant Ranking Minority Member; Graham.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Civil Rights & Judiciary be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Staff: Yvonne Walker (786-7841).

Background:

Under the federal Brady Handgun Violence Prevention Act (Brady 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, 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.

Federal law defines "firearm" in a manner that includes the frame or receiver of a firearm. Federal regulations define "firearm frame or receiver" as that part of a firearm that provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

Under federal law it is unlawful for a dealer to transfer any firearm, other than a rifle or shotgun, to a nonresident of the dealer's state of residence. In addition, a dealer may not transfer a firearm to a person under age 18, and if the firearm is other than a rifle or shotgun, may not transfer the firearm to a person under age 21. Frames and receivers do not meet the federal definitions of either handguns or long guns and so are categorized as "other" firearms.

The Bureau of Alcohol, Tobacco, Firearms and Explosives has provided guidance that "other" firearms may not be transferred to persons under the age of 21 or to persons residing in another state. As such, "other" firearms must be processed in the same manner as handguns for the purposes of the required background check under the Brady Act.

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. This includes transfers of firearms categorized as "other" under federal law. The FBI indicated that the NICS section will stop processing NICS background checks for these transfers, but has delayed this change to give the state time to revise its laws governing these transfers.

Summary of Substitute Bill:

Beginning on the date that is 30 days after the Washington State Patrol (WSP) notifies firearms dealers that a state background check system is established within the WSP, a dealer must use the state background check system to conduct background checks of purchasers or transferees of firearm frames or receivers. "Firearm frame or receiver" is defined as the federally regulated part of a firearm that provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.

A dealer may not deliver a firearm frame or receiver to a purchaser or transferee unless the dealer conducts a background check on the applicant through the state background check system and:

- the results of all background checks are known and the purchaser or transferee: (i) is not prohibited from owning or possessing a firearm under federal or state law; and (ii) does not have a voluntary waiver of firearm rights currently in effect; or
- 10 business days have elapsed from the date the licensed dealer requested the background check.

When processing an application for the purchase or transfer of a firearm frame or receiver, a dealer shall comply with the application, recordkeeping, and other requirements of the law that apply to the sale or transfer of a pistol.

A signed application for the purchase or transfer of a firearm frame or receiver constitutes a waiver of confidentiality and written request that the Health Care Authority, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility to possess a firearm. Any such mental health information received by a court, law enforcement agency, or the state may not be disclosed except to law enforcement or corrections agencies.

The Department of Licensing must keep copies or records of applications for the purchase or transfer of firearm frames and receivers and copies or records of firearm frame or receiver transfers in the same manner as pistol and semiautomatic assault rifle application and transfer records.

A person who knowingly makes a false statement regarding identity or eligibility requirements on the application to purchase a firearm frame or receiver is guilty of false swearing.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The Federal Bureau of Investigation (FBI) has decided that it is no longer going to conduct the background check for firearm parts, in particular firearm frames and receivers. It is quite easy to buy a frame or receiver and assemble a gun, and there have been some troubling advertisements that people can avoid background checks by buying firearm parts and assembling a firearm. Background checks are effective in preventing needless deaths and injuries from firearms. It is an important public safety measure to ensure that background checks are comprehensive and effective to keep firearms out the hands of people who are prohibited from possessing them. The FBI said they will stop processing these background checks on July 1 of this year, so the state needs to start conducting these checks. This bill is needed as an interim measure until a state background check system is established.

(Opposed) Law enforcement supports the policy in this bill to solve the problem created when the FBI decided they would no longer conduct these checks. It is important for the state to pick up this responsibility. The opposition relates to the manner in which the problem is addressed. The responsibility for the checks is being placed on local law enforcement agencies. That is a logical approach, but law enforcement agencies do not have the capacity to take on this work. Data from the FBI shows there were over 46,000 transactions in the "other" category. Law enforcement agencies have already been overwhelmed with increased workload from the passage of Initiatives 594 and 1639, and no new funding or resources have been provided to do the work. There is a good chance the FBI will give us another extension so that we can address these checks through a new state background check system.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Goodman, prime sponsor.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.