

SENATE BILL REPORT

E2SHB 2467

As of March 2, 2020

Title: An act relating to establishing a centralized single point of contact background check system for firearms transfers.

Brief Description: Establishing a centralized single point of contact background check system for firearms transfers.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hansen, Irwin, Griffey, Barkis and Wylie).

Brief History: Passed House: 2/13/20, 66-32.

Committee Activity: Law & Justice: 2/24/20, 2/27/20 [DP-WM, DNP].

Ways & Means: 2/29/20.

Brief Summary of Bill

- Establishes a state background check unit managed by the Washington State Patrol (WSP) for the processing of background checks for all firearm transfers and purchases.
- Establishes a Background Check Advisory Board to provide oversight on the establishment and operation of the state firearm background check system.
- Requires dealers to utilize the state background check system for all firearm transfers 30 days after notice from WSP that the system is operational.
- Permits WSP to charge a fee for a firearm background check not to exceed \$18.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

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.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: Under the federal Brady Handgun Violence Prevention Act, a federally 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.

Under state law, an FFL may only access NICS directly when conducting a sale or transfer of a firearm that is not a pistol or a semiautomatic assault rifle (SAR). When conducting the sale of a pistol or SAR, the FFL must submit the purchase application to local law enforcement to conduct the background check. In addition to the NICS check, the local law enforcement agency must conduct a check of the WSP databases, the Department of Licensing firearms database, local records management systems, state and local mental health agencies, and other agencies or resources as appropriate.

Because of this bifurcated process, Washington is designated as a partial point of contact (POC) state for purposes of accessing NICS. States have the option of operating as a full or single POC, non-POC, or partial POC. Last session the Legislature requested the Office of Financial Management (OFM) conduct a feasibility study and make recommendations regarding whether Washington should operate as a single POC for NICS and establish a centralized firearm background check system. OFM released its report in November 2019, recommending that the state implement a single POC background check system located within WSP. The report further concluded that creating a single POC background check system would improve public safety and streamline the background check process.

Summary of Bill: Automated Background Check System. WSP must establish a firearm background check unit to serve as a centralized single POC for dealers to conduct background checks for firearm sales or transfers. The background check system must be automated and:

- allow a dealer to contact WSP through a web portal or other electronic means and by telephone;
- provide a dealer with a notification that a firearm purchase or transfer application has been received;
- assign a unique identifier to the background check inquiry;
- provide an automated response to the dealer indicating whether the transfer may proceed, is denied, or the check is indeterminate and more investigation is required;
- include measures to ensure the confidentiality and security of all data transmitted and received by the system; and
- include a performance metrics tracking system to evaluate the performance of the system.

Background Check Process. When WSP receives a request from a dealer for a background check in connection with the sale or transfer of a firearm, WSP must:

- conduct a check of federal and state databases, including NICS; the Washington crime information center and Washington state identification system; the HCA electronic database, the FBI national data exchange database, and any available repository of statewide local law enforcement record management systems information; the AOC case management system; and other databases or resources as appropriate;
- perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if the applicant has been convicted of an out of state crime that would prohibit firearm ownership in Washington; and
- notify the dealer without delay if the records indicate the individual is approved or prohibited from possessing a firearm or whether more investigation is needed.

WSP must work with the Administrative Office of the Courts (AOC) to build a link between the firearm background check system and the AOC case management system for the purpose of accessing court records to determine a person's eligibility to possess a firearm.

WSP shall require a dealer to charge a fee to conduct the background check for any purchase or transfer of a firearm, not to exceed \$18. The fee shall be transmitted to the firearms background check system account and once established, shall replace the fee established in I-1639 for the processing of an application associated with the purchase of an SAR.

WSP must establish a procedure for those who have been denied a firearm transfer as the result of a background check to appeal the denial to WSP, obtain information on the basis of the denial, and review and correct any erroneous records. All records and information prepared, obtained, used, or retained by WSP in connection with a request for a firearm background check are exempt from public inspection and copying.

Washington Background Check Advisory Board. WSP must consult with the Washington Background Check Advisory Board (Board) in carrying out its duties. The Board shall consist of the following members, appointed by the Governor:

- the chief of WSP or the chief's designee;
- the executive director of the Washington Association of Sheriffs and Police Chiefs (WASPC) or the executive director's designee;
- a sheriff;
- a police chief;
- a licensed firearms dealer;
- a member of the general public.

The Board shall convene within 90 days of the effective date of the bill and must meet no less than monthly until WSP deems the background check unit is operational, at which time the Board shall meet quarterly. The Board shall:

- provide input and feedback regarding the establishment and operation of the firearms background check unit;
- provide input on the development of the firearms background check unit budget prior to its formal submission to OFM;

- be consulted prior to proposing or adopting any rule relating to the firearms background check unit;
- require reports from WSP on matters pertaining to the firearms background check unit; and
- report to the Governor and appropriate committees of the Legislature each year on activities of the Board and the firearms background check unit.

Members shall serve a term of four years and serve without compensation, but may receive travel reimbursement. WSP must provide staffing and budgetary resources necessary for the board to fulfill its duties. Members are immune from civil liability for actions taken in good faith.

Implementation of Centralized Background Check System. Thirty days after WSP issues a notification to dealers that a state firearms background check system is established within WSP, a dealer must use the state background check system to conduct background checks for all firearm transfers. A dealer may not sell or transfer a firearm to an individual unless the dealer first contacts WSP for a background check.

When an applicant applies for the purchase or transfer of a pistol or SAR, the dealer shall comply with all requirements of Chapter 9.41 RCW. The purchase or transfer of a firearm that is not a pistol or SAR shall be processed in the same manner as a pistol, except that records of the transfer need not be forwarded to the Department of Licensing or local law enforcement.

Reporting of Denied Firearm Purchases. Provisions are updated regarding the required reporting of instances of a denied purchase or transfer of a firearm due to a failed background check. WSP shall report each instance of a denied background check to local law enforcement and maintain an electronic database accessible by law enforcement containing the denial. WSP must provide information of denials to WASPC so that it may prepare its annual report on the number of denied firearm sales or transfers.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony (Law & Justice): PRO: Utilizing the current background check system may get inconsistent results depending on what type of check you are conducting. Second, the FBI has stopped authorizing certain types of NICS check which means there is a delay in people getting firearms they are legally entitled to.

There are a number of challenges under the current law, not the least of which is the difference between state and federal law. Another challenge is the volume of these checks that are being required. The number is increasing substantially with the implementation of

I-1639 and other legal interpretations. It is a matter of public safety if local law enforcement cannot get these done within the ten day time period.

There is currently an \$18 fee for processing background checks for semiautomatic assault rifles. We hope to get the fee down below \$18 after implementation and know more about the cost.

Because the FBI will no longer allow NICS checks for CPL Holders, a licensee must wait between 10 and 30 days to purchase a firearm when previously they would be able to get a transfer on the same day. This system will take us back to instant or near instant purchase ability. The proposed system should result in fewer errors which will prevent people who should not get access from obtaining firearms and those who are entitled to purchase to get possession sooner. We have reservations with regard to the fees imposed. Background checks are for the safety of all citizens, not just those that are exercising their constitutional right to purchase a firearm.

CON: Many gun owners are not wealthy. A person should not have to pay an additional tax to exercise their constitutional right to defend themselves and their family. It is a failure of the state that a check must be re-completed for a CPL holder to purchase a firearm. The state needs to stop doing duplicate checks. This bill penalizes the purchaser for the state's incompetence.

The instant background check system was working well until the state intervened with I-1639. This bill is an infringement on 2nd amendment rights and the fee amounts to a poll tax. NICS does not charge anything to conduct a background check.

OTHER: The membership of the board should not be appointed by the governor. Rather, membership should be appointed by county. The Board serves at the Governor's whim, provides limited oversight over firearm background checks, and has no expertise in firearm issues. There are many false positives when conducting background checks. The appeal process is inadequate.

There is no evidence as to why the fee amount of \$18 is needed. Oregon and Colorado only charge around \$10.

Persons Testifying (Law & Justice): PRO: Representative Drew Hansen, Prime Sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Tom Kwieciak, National Rifle Association.

CON: Curtis Bingham, Adventure Protection; Sharyn Hinchcliffe, Pink Pistols Seattle–Tacoma; Ira Moser, citizen.

OTHER: Luis Berbesi, citizen; Michael Findlay, National Shooting Sports Foundation; Phil Watson, Firearms Policy Coalition.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): OTHER: We like the underlying policy of the bill, but not the funding mechanism. The bill has been a bipartisan effort and will be a vast improvement. This bill removes burdens from local law enforcement. However, we have a problem with the fee. We believe it is inappropriate to charge a fee to exercise a constitutional right. For context, Oregon charges \$10 for a background check. We ask you to reconsider the fee.

Persons Testifying (Ways & Means): OTHER: Tom Kwieciak, National Rifle Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.