

# HOUSE BILL REPORT

## HB 1839

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to the criminal background check and other requirements applicable to the purchase and transfer of firearms.

**Brief Description:** Concerning criminal background checks and other requirements applicable to the purchase and transfer of firearms.

**Sponsors:** Representatives Goodman, Blake, Shea, Takko, Jinkins, Pollet and Tharinger.

**Brief History:**

**Committee Activity:**

Judiciary: 2/20/13, 2/21/13 [DPS].

**Brief Summary of Substitute Bill**

- Revises background check and other requirements applicable to the transfer of a pistol by a dealer.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

**Staff:** Edie Adams (786-7180).

**Background:**

Pistol Purchases.

Both state and federal law regulate the possession, purchase, and transfer of pistols. Firearms dealers must be licensed under both federal and state law and must comply with state and federal law when making firearms transfers.

*Federal Law.*

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*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.*

Under the federal Brady Act, a dealer must, with few exceptions, conduct a background check 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.

The dealer may initiate the NICS check either by contacting the Federal Bureau of Investigation or a state "point of contact" agency. In Washington, local sheriffs and police departments serve as "partial points of contact" for licensed dealers in conducting the NICS check. This means that a licensed firearm dealer will contact the local sheriff or police department to conduct the NICS check and the state background check for all pistol transfers where the purchaser does not have a valid concealed pistol license (CPL). However, if the purchaser has a valid CPL, local law enforcement will conduct a state background check, and the dealer will conduct an NICS check, if required.

#### *State Law.*

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

- the purchaser produces a valid 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
- five business days have elapsed since the application was received by the law enforcement agency (or up to 60 days if the person does not have a Washington driver's license or has not resided in the state for the previous 90 days).

A dealer must deliver the pistol to the purchaser following the specified time periods unless the law enforcement agency has notified the dealer of an investigative hold.

The statute's provisions governing required background checks do not reflect the practice used by dealers and local law enforcement agencies serving as partial points of contact. One provision requires local law enforcement agencies, in determining whether a person is eligible to possess a firearm, to conduct a background check with the National Crime Information Center, Washington State Patrol database, Department of Social and Health Services (DSHS) database, or other agencies or resources as appropriate. Another provision of the statute requires dealers to use the NICS system to conduct background checks of applicants to purchase firearms, and local law enforcement to continue to check the DSHS database or other agencies or resources as appropriate.

#### 2011 CPL Legislation.

Federal law generally requires dealers to conduct background checks of all purchasers of firearms. There is an exception to this requirement where the purchaser possesses a state permit qualified by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) as an alternative to the point-of-transfer background check ("NICS alternative"). Prior to 2011 a Washington CPL did not meet the federal requirements necessary to qualify as a NICS alternative.

Legislation enacted in 2011 (Substitute House Bill 1923) altered the requirements for the issuance of a concealed pistol license. This legislation took effect on July 22, 2011, and as a result of these changes, the BATFE has determined that a Washington CPL issued on or after that date is a qualifying state permit, or "NICS alternative." This means that dealers are no longer required under federal law to conduct a background check of a purchaser who possesses a valid Washington CPL issued on or after July 22, 2011. However, state firearms laws continue to require a dealer to conduct a background check of all persons who purchase a pistol from a licensed firearms dealer.

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**Summary of Substitute Bill:**

Background checks and other requirements relating to the purchase and transfer of a pistol by a dealer are revised.

A background check is no longer required for a pistol purchase if the purchaser produces a valid CPL issued on or after July 22, 2011. A background check is also not required for a full-time commissioned Washington law enforcement officer who produces law enforcement agency credentials and the dealer confirms that the law enforcement officer is a full-time commissioned Washington law enforcement officer.

A dealer must continue to conduct an NICS check of any purchaser who produces a valid CPL issued before July 22, 2011, but the requirement that local law enforcement conduct a state background check in this circumstance is eliminated.

For purchasers who do not produce a valid CPL, the local law enforcement agency must conduct an NICS check and a state background check.

The requirement that a dealer must transfer a pistol to a purchaser after the specified time period (5 days or 60 days), unless there are grounds for an investigative hold, applies only with respect to purchasers who are subject to the five-day or 60-day time period.

**Substitute Bill Compared to Original Bill:**

The original bill did not exempt full-time commissioned Washington law enforcement officers from the state background check requirements when purchasing a firearm from a dealer.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 22, 2013.

**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) This bill will accomplish what the Legislature intended when it made changes to the concealed pistol license process a couple of years ago. An NICS check is done by law enforcement agencies when a CPL is issued. The bill streamlines the process so that the CPL holders will not have to go through another check when purchasing a firearm. Legislation enacted in 2011 amended the CPL issue statute so that the CPLs would be recognized as an alternative to an NICS check under federal law. However, the state firearm transfer statutes were not amended, so a background check is still required under state law. This bill closes that loop and allows persons with the CPLs issued on or after July 22, 2011, to avoid another check when purchasing a firearm. For the CPLs issued prior to that date, an NICS check must still be conducted, but not a state check.

(With concerns) Washington State Patrol has concerns about the potential risks of removing the background check requirements. There is no mechanism in this bill for a dealer to verify that the CPL is valid. The CPLs are valid for five years, and there is no way for the dealer to know whether the CPL holder has subsequently become prohibited from possessing firearms. For the CPLs issued prior to 2011, there is an NICS check, but the NICS does not include Washington-only warrants or some mental health records. There are a number of language issues that will cause confusion.

(Opposed) None.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; and Brian Judy, National Rifle Association.

(With concerns) Rob Huss, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.