
Judiciary Committee

HI 591

Title: Protecting gun and other firearm rights.

Brief Description: Protect our gun rights.

Sponsors:

Brief Summary of Bill

- Provides that it is unlawful for any government agency to require background checks on the recipient of a firearm unless a uniform national standard is required.
- Provides that it is unlawful for any government agency to confiscate guns or other firearms from citizens without due process.

Hearing Date: 1/28/14

Staff: Edie Adams (786-7180).

Background:

Background Check Requirements.

Under state and federal laws, firearms dealers (dealers) are required to have licenses in order to sell firearms. Under state law, a dealer includes anyone engaged in the business of selling firearms who has or is required to have a federal dealer's license. A person is not required to have a dealer's license in order to sell firearms if the person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

State and federal law require dealers to conduct background checks on sales or transfers of firearms to unlicensed persons. Neither state nor federal law requires background checks for firearms sales or transfers by persons who are not dealers. However, it is unlawful for a person to transfer a firearm to another person whom he or she has reasonable cause to believe is ineligible to possess a firearm.

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.

Federal Requirements. Under the federal Brady Act, a dealer must, with few exceptions, conduct a background check on all firearm sales or transfers to unlicensed 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).

A NICS check typically returns an immediate response. However, if the NICS system response is delayed, the dealer may deliver the firearm to the purchaser three business days after initiating the NICS check if the dealer has not received a notification from NICS in that time that the purchaser is ineligible to possess a firearm.

State Requirements. State law regulates the sale or transfer of pistols by dealers, but does not regulate the transfer of long guns. The dealer contacts the local sheriff or police department to conduct the NICS check and a state background check for all pistol transfers where the purchaser does not have a valid concealed pistol license (CPL). If the purchaser has a valid CPL, local law enforcement will conduct a state background check, and the dealer will conduct the NICS check, if required.

A dealer may not deliver a pistol to a prospective purchaser until one of the following occurs:

- the purchaser produces a valid concealed pistol license;
- 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 (up to 60 days if the person does not have a Washington driver's license or identification 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.

Firearms Forfeiture and Surrender Laws.

There are various state statutes authorizing the government to seize and seek forfeiture of property due to its connection with criminal activity. In addition, there are state statutes that specifically authorize the forfeiture or surrender of firearms under certain circumstances.

The firearm forfeiture statute allows courts to order forfeiture of firearms under a number of circumstances, including if the firearm is proven to be: found in the possession of a person prohibited from possessing firearms; found concealed on a person who does not have a CPL; in the possession or under the control of a person at the time of commission of or arrest for a felony; in the possession of a person who was mentally incompetent when apprehended, or who is thereafter committed; used or displayed in violation of a court order; or used in the commission of a felony or of a non-felony crime in which a firearm was used or displayed. Firearms seized under this statute must be returned if the court finds there is no probable cause to believe a violation occurred or if the criminal proceedings are dismissed.

Under the firearm surrender statute, a person who is subject to a protection order, no-contact order, or restraining order may be required to surrender his or her firearms while the order is in place. Depending on the circumstances, the court either may or must require the person to surrender a firearm if the person has used or threatened to use a firearm in the commission of a

felony, or is otherwise disqualified from having a firearm. The court may order the firearm surrendered to the local law enforcement, to the restrained person's counsel, or to another person designated by the court.

Summary of Bill:

The firearms law is amended to add two new provisions relating to background checks on firearm purchasers and confiscation of guns and other firearms.

It is unlawful for any government agency to require background checks on the recipient of a firearm unless a uniform national standard is required.

It is unlawful for any government agency to confiscate guns or other firearms from citizens without due process.

These provisions are to be liberally construed to effectuate the intent, policies, and purposes of the act.

Appropriation: None.

Fiscal Note: Not requested.