

HOUSE BILL REPORT

ESSB 5552

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 entity and its employee or agents for lawful purposes in the ordinary course of business, defining licensed collector and curio or relic, 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, providing an exemption for licensed collectors when the firearm is a curio or relic, 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: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Zeiger, Frockt, Takko, O'Ban, Fain and Hobbs).

Brief History:

Committee Activity:

Judiciary: 3/9/17, 3/16/17 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Revises definitions for the terms "firearm" and "transfer," and establishes definitions for the terms "curio or relic" and "licensed collector," in the chapter of law regulating firearms.
- Makes changes with respect to exemptions from background check requirements for firearms sales or transfers.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

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: Edie Adams (786-7180).

Background:

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.

Licensed Collectors of Curios or Relics. Under federal law, a person may obtain a collector's license that allows the person to engage in transactions in curio and relic firearms for personal collection purposes. A licensed collector may not engage in the business of buying and selling curios and relics. Licensed collectors are required to maintain an acquisition and disposition record for the receipt, sale, or other disposition of firearms, but transfers of curio

and relic firearms by licensed collectors are not subject to NICS background check requirements.

"Curios and relics" are firearms that are of special interest by reason of some qualities not ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories: (a) firearms manufactured at least 50 years prior to the current date; (b) firearms certified as a curio or relic of museum interest by the curator of a museum that exhibits firearms; and (c) other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or associated with some historical figure, period, or event.

Summary of Amended Bill:

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 entity licensed or qualified to do business in the state to, or return of that firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

Revisions are made to the types of sales or transfers that are exempt 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.

Three additional exemptions from required background checks are established. A sale or transfer of a firearm is exempt when the purchaser or transferee is a federally licensed collector and the firearm being sold or transferred is a curio or relic. 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.

Amended Bill Compared to Engrossed Substitute Bill:

The provision stating that "transfer" does not include the delivery of a firearm between an entity and its employees or agents is revised to provide that agents is defined to include volunteers participating in an honor guard.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended 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) Many people from both sides came together in good faith to figure out proactive changes to address some of the issues that have been raised from experience with the background check law. The bill makes the law easier to understand and enforce. Some of the items reflect the current state of the law, but there is a benefit to making things clearer. The language developed by the suicide prevention task force provides an additional tool to keep a family member safe. The employer-employee language was broadened to address nonprofit auctions and this language will also address the issue raised in the House about use of firearms in veterans' ceremonies.

(Opposed) None.

(Other) The National Rifle Association is neutral on the bill as long as no changes are made to the language. There was opposition originally to the House version of the bill based on concerns with the suicide language, but all sides worked together to come up with agreed upon language and those changes have been incorporated into the bill.

Persons Testifying: (In support) Senator Pedersen, prime sponsor; and Rebecca Johnson, Alliance for Gun Responsibility.

(Other) Tom Kwieciak, National Rifle Association.

Persons Signed In To Testify But Not Testifying: None.