

HOUSE BILL REPORT

E2SHB 2467

As Passed House:
February 13, 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:

Committee Activity:

Civil Rights & Judiciary: 1/17/20, 1/24/20 [DPS];
Appropriations: 2/6/20, 2/8/20 [DP2S(w/o sub CRJ)].

Floor Activity:

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

Brief Summary of Engrossed Second Substitute Bill

- Requires the Washington State Patrol (WSP) to establish and operate a Firearms Background Check Unit (Unit) and an automated firearms background check system to serve as a single point of contact for firearms dealers to conduct background checks required under state and federal law.
- Requires firearms dealers to use the state firearms background check system to conduct background checks for all firearms transfers beginning 30 days after the WSP issues a notice to dealers that the system is established.
- Creates the Washington Background Check Advisory Board to oversee the Unit and the operation of the firearms background check system.
- Revises procedures relating to the reporting of denied firearms transfers, effective 30 days after the WSP issues a notification that a state firearms background check system is established.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kirby, Klippert, Orwall, Rude, Valdez and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Graham and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 26 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Caldier, Kraft, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker.

Staff: Yvonne Walker (786-7841).

Background:

Federal Background Check Laws.

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.

When the NICS became operational, the Federal Bureau of Investigation 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 the NICS check for pistol transfers is conducted by the state, and the NICS check for long gun transfers is conducted by the dealer. Local law enforcement agencies serve as the partial POC for dealers in conducting the NICS checks for pistol transfers.

State Background Check Laws.

State law requires background checks for all firearms transfers to determine whether the purchaser or transferee is eligible to possess firearms, including sales and transfers through a dealer, at gun shows, online, and between persons who are not licensed dealers (unlicensed persons). A sale or transfer of a firearm where neither party is a dealer must be completed through a dealer, and 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.

Specific requirements apply to the sale or transfer of a pistol or semiautomatic assault rifle, including a requirement that the dealer contact the local law enforcement agency to conduct a state background check for these transfers. In addition to the NICS check, the local law enforcement agency conducts a check of the Washington State Patrol (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.

State law does not require a background check of state databases by local law enforcement for sales or transfers of shotguns or rifles that are not semiautomatic assault rifles. However, the dealer must conduct a NICS check as required under federal law.

Denied Firearms Transfers.

Dealers are required to report to the Washington Association of Sheriffs and Police Chiefs (WASPC) each instance where the sale or transfer of a firearm is denied as the result of a background check indicating the applicant is ineligible to possess a firearm. The WASPC reports this information to the local law enforcement agency and to the WSP, which must include the information in its electronic database accessible to law enforcement agencies. The WASPC operates a grant program for local law enforcement agencies to conduct criminal investigations of persons who illegally attempt to obtain a firearm within their jurisdictions. In addition, the WASPC must prepare an annual report on the number of denied firearms sales or transfers reported by firearms dealers, and operate a victim protective order notification program.

Single Point of Contact System Feasibility Study.

Legislation enacted in 2019 directed the Office of Financial Management (OFM) to conduct a feasibility study and make recommendations regarding the establishment of a single POC firearms background check system. The OFM submitted its report and recommendations in November 2019, finding that the creation of a single POC background check system is both feasible and an advisable course of action. The report indicated that creating a single POC background check system would improve public safety and streamline the background check process. The report recommended the centralized background check unit and associated systems be placed within the WSP.

Summary of Engrossed Second Substitute Bill:

Washington State Patrol Firearms Background Check Unit.

The Washington State Patrol (WSP) must establish a Firearms Background Check Unit to serve as a centralized single point of contact for dealers to conduct background checks for

firearms sales or transfers required under state law and the federal Brady Handgun Violence Prevention Act.

The WSP must establish an automated firearms background check system to conduct background checks on applicants for the purchase or transfer of a firearm. The system must allow a dealer to contact the WSP through a web portal or other electronic means and by telephone to request a background check of an applicant for the purchase or transfer of a firearm and provide an automated response to the dealer indicating whether the transfer may proceed or is denied, or that the check is indeterminate and will require further investigation. The system must include measures to ensure data integrity and the confidentiality and security of records in the system and a performance metrics tracking system to evaluate the performance of the system.

Upon receipt of a request from a dealer for a background check, the WSP must provide the dealer with a notification that a firearm transfer application has been received, conduct a background check of the applicant, and notify the dealer without delay that the records indicate the individual is prohibited from possessing a firearm and the transfer is denied or that the individual is approved to complete the transfer. If the results of the background check are indeterminate, the WSP must notify the dealer of the delay and conduct necessary research and investigation to resolve the inquiry. The WSP must provide the dealer with a unique identifier for each background check inquiry.

The background check must include a check of the following databases:

- the National Instant Criminal Background Check System;
- the Washington Crime Information Center and Washington State Identification System;
- the Health Care Authority electronic database;
- the Federal Bureau of Investigation national data exchange database and any available repository of statewide law enforcement record management systems information;
- the Administrative Office of the Courts (AOC) case management system; and
- other databases or resources as appropriate.

The WSP must work with the 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.

The WSP must perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if a person has been convicted of a felony that is equivalent to a state felony. In addition, the WSP must establish a procedure for a person who has been denied a firearms purchase or transfer as the result of a background check to appeal the denial to the WSP and to obtain information on the basis for the denial and procedures to review and correct any erroneous records that led to the denial.

The WSP must establish a fee that a dealer must charge each firearm purchaser or transferee, except the fee does not apply to any background check conducted in connection with a pawnbroker's receipt of a pawned firearm or the redemption of a pawned firearm. The fee must be established in an amount necessary to cover the annual costs of operating and

maintaining the firearm background check system, but must not exceed \$18. Legislative intent is stated that this fee will replace the fee for semiautomatic assault rifle transfers once the state background check system is established. The WSP must transmit the fees collected to the State Treasurer for deposit in the newly created State Firearms Background Check System Account. Expenditures from the account may be used only for the creation, operation, and maintenance of the state firearms background check system.

All records and information prepared, obtained, used, or retained by the WSP in connection with a request for a firearm background check are exempt from public inspection and copying under the Public Records Act.

Dealer Requirements.

Beginning on the date that is 30 days after the WSP issues a notification to dealers that a state firearms background check system is established within the WSP, a dealer must use the state system to conduct background checks for all firearm sales or transfers, except sales or transfers to licensed dealers and sales or transfers of antique firearms.

A dealer may not sell or transfer any firearm to an individual unless the dealer first contacts the WSP for a background check to determine the eligibility of the purchaser or transferee to possess a firearm. For sales or transfers of pistols and semiautomatic assault rifles, a dealer must comply with all requirements of state firearms laws that apply to the sale or transfer of a pistol or semiautomatic assault rifle. The purchase or transfer of a firearm that is not a pistol or semiautomatic assault rifle must be processed under the same requirements that apply to the sale or transfer of a pistol, except that current Department of Licensing recordkeeping requirements do not apply to these transactions. A dealer must charge a purchaser or transferee a background check fee established by the WSP and remit the proceeds to the WSP on a monthly basis.

Washington Background Check Advisory Board.

The Washington Background Check Advisory Board (Board) is established with a primary purpose of ensuring that the WSP Firearms Background Check Unit (Unit) is administered efficiently and effectively, and in a manner that honors individual firearms rights while preventing prohibited persons from obtaining firearms. The WSP must consult with the Board in carrying out its duties in establishing and operating the state firearms background check system.

The Board consists of the following members, appointed by the Governor:

- the chief of the WSP or the chief's designee;
- the executive director of the Washington Association of Sheriffs and Police Chiefs or the executive director's designee;
- one sheriff and one police chief;
- one representative of an organization known to actively advocate in Washington on behalf of greater firearm regulation; and
- one member of the general public.

The Board's duties are to provide input and feedback on the establishment of the Unit, provide input on the development of the Unit's budget, and be consulted with prior to the proposal and adoption of any rule relating to the Unit. In addition, the Board must require

reports from the chief of the WSP on matters pertaining to the Unit, and report annually to the Governor and the Legislature on the activities of the Board and the Unit.

Members of the Board serve four-year terms on a staggered schedule. Members serve without compensation but are entitled to travel reimbursement. The Board must initially convene within 90 days of the effective date of the bill, and must meet at least monthly until the Unit is operational and quarterly thereafter. The WSP must provide the staffing and budgetary resources necessary for the Board to properly fulfill its duties. Members serving in their official capacity on the Board, or their employers or other entity that selected the members to serve, are immune from a civil action based on an act performed in good faith.

Denied Firearms Transfers.

Procedures relating to the reporting of denied firearms purchases are revised, effective 30 days after the WSP issues a notification that a state firearms background check system is established. Dealers are no longer required to report to the Washington Association of Sheriffs and Police Chiefs (WASPC) each instance where an application for the purchase or transfer of a firearm is denied. Instead, the WSP must report denied firearms purchases or transfers to the local law enforcement agency in the jurisdiction where the attempted purchase or transfer took place. The WSP must provide the local law enforcement agency with updates for reports that indicated an initial denial but that are subsequently approved. The WSP, rather than local law enforcement, will serve as the contact for information on a denial based on a state background check. The WSP must provide the WASPC with any information necessary for the preparation of the denied firearms transfers report, operation of the victim protective order notification program, and administration of the grant program for criminal investigations of illegal attempts to purchase firearms.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 5 through 9, relating to denied firearms transfers, which take effect 30 days after the Washington State Patrol notifies firearm dealers of the newly established background check system.

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

(In support) This bill is the result of a two-year effort involving law enforcement, the National Rifle Association, and other stakeholders. Background checks are the foundation of the state's gun safety laws. It is important to get those right so that people who are entitled to have a firearm can obtain them quickly, but people who should not have a firearm are not able to obtain them. The current background check system has some weaknesses on both counts.

There are examples where people who are not legally allowed to own a firearm are in fact slipping through the cracks. This creates a public safety danger. In addition, because of federal actions, it is now more difficult for people who are legally entitled to purchase a firearm to get a firearm. Concealed pistol license (CPL) holders are no longer able to have

same day purchases and are now having to wait anywhere from 10 to 30 days to exercise their constitutional right. The single point of contact system is hopefully the solution to provide quick and accurate background checks. Adding a new fee on gun owners is problematic, especially since currently there is no fee for a National Instant Criminal Background Check System (NICS) check.

Law enforcement supports the bill for a number of reasons. Law enforcement agencies currently conduct these background checks and that work is not funded by the state. It is an unfunded mandate by the state to perform these checks, and the responsibility continues to grow. The bill also will help with creating uniformity in the system. Currently different rules apply depending on who does the background check, and the same person could get approved by the federal government but be denied locally.

A lot of hard work went into this bill, and the Washington State Patrol is in support of this effort and will continue to work to make this a success. Clarification is needed around the accountability board as to exactly what the board will be doing since federal and state law already provide accountability. In addition, there is a technical concern with the current 90-day implementation date.

(Opposed) The state already takes in a lot of money on gun fees, including \$15 dollars of the CPL fee and an \$18 fee on semiautomatic rifle transfers. These two fees alone add up to over \$2 million per year that could be used to fund the state system. These fees are a tax on a constitutional right. There will likely be a legal challenge to the many gun taxes at the state and local level.

Having a single point of contact system is a good idea because it will reduce the amount of time that an individual has to wait to acquire a firearm. The current delays create a danger for victims of domestic violence or other crimes because it prevents them from being able to defend themselves. However, the background check fee needs to be eliminated. The additional fee imposes a huge burden on low-income people who are barely scraping by. It is extremely difficult for someone on a fixed income to have to pay a fee on top of the cost of the firearm. This impairs their constitutional right to defend themselves. There needs to be continuity between the background check system and mental health record checks to save the state money and speed up the process.

(Other) The bill establishes a fee for the background check and does not set a cap on the amount. The state should provide greater funding for this system, rather than leaving the burden strictly on gun owners. The bill makes no provision for how long the state will keep the background check records, which raises a concern around whether this will result in registration of long guns. The bill should specify a limit on the length of a delay allowed in running the check.

Establishing a state background check system will be beneficial for two main reasons. First, the NICS section is a very opaque agency that is difficult to deal with. It will be an improvement if gun owners no longer have to deal with them moving forward. The second benefit is uniformity and consistency. It is extremely possible, and very probable, that under the current system, people may receive different outcomes depending on who does the

background check. There are a number of technical improvements that need to be made to the bill.

Staff Summary of Public Testimony (Appropriations):

(In support) This proposal is based upon an Office of Financial Management study relating to strengthening and modernizing the state's background check process. This bill is also the product of about a year's worth of bipartisan work and has been a collaborative process from persons on both sides of the aisle. This will not only increase public safety but will facilitate people's Second Amendment rights. People who are not prohibited from having firearms should be able to have them and people who should not have them should not be able to get them. This bill will ensure that one person buying two different firearms gets the same result.

(Opposed) None.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Hansen, prime sponsor; Representative Irwin; James McMahan, Washington Association of Sheriffs and Police Chiefs; Tom Kweciak, National Rifle Association; and Captain Neil Weaver, Washington State Patrol.

(Opposed) Phil Watson, Firearms Policy Coalition; Sharyn Hinchcliffe, Pink Pistols Seattle and Tacoma; and Mike Silvers.

(Other) James Barrick; Dan Martin; and Vitaliy Kertchen.

Persons Testifying (Appropriations): Representative Hansen, prime sponsor; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

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

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