



## Summary of Initiative 594

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 594. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

### BRIEF SUMMARY

- Provides that all firearms sales or transfers in Washington, including by dealers, online, at gun shows, and between private persons, are subject to background checks unless specifically exempted.
- Requires firearm sales or transfers between unlicensed persons to be completed through a licensed dealer according to specified procedures, including a requirement that the dealer comply with all laws that would apply if selling the firearm from its own inventory.
- Provides exemptions from the background check requirements and establishes criminal penalties for violations of the initiative.
- Requires the Department of Licensing (DOL) to report a dealer's violation of the firearms chapter to the federal government, and allows the DOL to revoke the license of a dealer who violates the chapter.
- Provides that firearms sales between unlicensed persons that comply with the initiative are not subject to sales tax and dealers who facilitate a sale between unlicensed persons in compliance with the initiative are not required to collect a use tax.

### BACKGROUND

#### Initiative 594

Initiative 594 was filed in 2013 as an initiative to the Legislature. Once certified, an initiative to the

Legislature is submitted to the Legislature at its next regular session, at which time the Legislature must take one of three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

The Legislature did not act on Initiative 594 during its 2014 Regular Session. This initiative is, therefore, being submitted to the people for approval or rejection at the November 2014 general election.

The ballot title and ballot measure summary are as follows:

**Ballot Title**

Statement of Subject: Initiative Measure No. 594 concerns background checks for firearm sales and transfers.

Concise Description: This measure would apply currently used criminal and public safety background checks by licensed dealers to all firearm sales and transfers, including gun show and online sales, with specific exceptions.

Should this measure be enacted into law? Yes [ ] No [ ]

**Ballot Measure Summary**

Current law requires criminal and public safety background checks before purchasing a firearm from a licensed dealer. This measure would extend this requirement to most firearm purchases and transfers in Washington, with exceptions, including transfers within families, temporary transfers for self-defense and hunting, and antiques. Licensed dealers would conduct the background checks and could charge a fee. Additional time would be allowed for pistol purchases. Violation of these requirements would be a crime.

**Overview of Firearms Laws**

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. 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 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.

Federal and state law prohibit certain persons from possessing firearms, including persons convicted of felonies and certain misdemeanor domestic violence offenses, minors, and persons who have been involuntarily committed for mental health treatment. Dealers must comply with both federal and state background check requirements before transferring firearms to persons who do not have a federal

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firearms license (unlicensed persons). Neither federal nor state law requires background checks for firearms transfers by unlicensed persons. However, it is a class C felony for a person to transfer a firearm to another person whom the transferor has reasonable cause to believe is ineligible to possess a firearm.

*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 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 that the purchaser is ineligible to possess a firearm.

With some exceptions, it is unlawful to transfer a firearm to an unlicensed person who resides in a different state than the transferor. One exception allows dealers to transfer rifles and shotguns to a person who is not a resident of the state in which the dealer is located if the transfer complies with all legal requirements applicable in both states.

*State Background Check Requirements.* The firearms chapter requires a dealer to conduct a background check for the sale or transfer of a pistol, but not for the sale or transfer of a rifle or shotgun. A purchaser must fill out an application containing specified information relating to the purchaser and the pistol being purchased. The dealer contacts the local sheriff or police department to conduct the NICS check and a state background check for all pistol sales or transfers where the purchaser does not have a valid concealed pistol license (CPL). If the purchaser has a valid CPL, the dealer will conduct any required NICS check, and the local law enforcement agency will conduct the required state background check. The state background check includes a check of the Washington State Patrol databases, the Department of Licensing (DOL) firearms database, and state and local mental health agencies.

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 (up to 60 days if the person does not have a Washington driver's license or identification card 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. A record of the pistol transfer must be retained by the dealer for six years, a copy of which must be submitted to the DOL, which maintains this information in its firearms database.

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Non-residents may purchase rifles and shotguns in Washington, and Washington residents may purchase rifles and shotguns in another state, as long as the transaction complies with federal law and the purchaser is eligible to purchase or possess the firearm under the laws of Washington and the other state.

*Other Provisions.* The DOL Firearms Unit maintains the state firearms database, which includes records of pistol transfers. In addition, the DOL Firearms Unit provides forms, information, and training to law enforcement agencies, firearms dealers, and the public relating to state firearms licensing requirements and regulations.

The state retail sales and use tax generally applies to the sale of firearms. There is a sales tax exemption for casual and isolated sales by sellers who are not engaged in business. A firearm sale by a private individual would thus not be subject to the sales tax, but the transaction would be subject to the state use tax. In addition, a firearms dealer who facilitates the sale of a firearm is required to collect use tax from the buyer.

## **SUMMARY**

### **Background Check Requirements**

All firearms sales or transfers are subject to background checks unless specifically exempted by federal or state law. This requirement applies to all sales or transfers in whole or in part in Washington, including sales and transfers through a dealer, at gun shows, online, and between unlicensed persons. "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment, including gifts and loans.

Any sale or transfer of a firearm where neither party is a dealer must be completed through a dealer according to the following requirements:

- The seller or transferor must deliver the firearm to the dealer. The seller or transferor may remove the firearm from the dealer's premises while the background check is being conducted, but the firearm must be returned to the dealer prior to completing the transaction.
- 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.
- If the purchaser or transferee is ineligible to possess a firearm, the dealer must return the firearm to the seller or transferor.

The dealer may charge a fee for facilitating a sale or transfer that reflects the fair market value of the administrative costs incurred.

A dealer may not deliver a firearm to a purchaser or transferee, except as otherwise authorized, until the earlier of:

- the completion of all required background checks if the purchaser or transferee is not ineligible under federal or state law to possess a firearm; or

- ten business days have passed since the dealer requested the background check, except this period is 60 days for a pistol transfer if the purchaser or transferee does not have a valid Washington driver's license or identification card or has not been a resident for the previous 90 days.

## **Exemptions**

The following are exempt from the background check requirements established in the initiative:

- gifts between family members;
- sales or transfers of antique firearms;
- sales or transfers by or to law enforcement and corrections agencies, and if in connection with official duties, law enforcement and corrections officers, military members, and federal officials;
- receipt of a firearm by a gunsmith for service or repair, or return of the firearm to its owner;
- temporary transfers where the transfer:
  - is necessary to prevent imminent death or great bodily harm to the transferee, if the transfer lasts only as long as needed and the transferee is not prohibited from possessing firearms;
  - is between spouses or domestic partners;
  - occurs at an established shooting range authorized by the local governing body and the firearm is kept at all times at the range;
  - occurs at a lawful organized firearm competition or performance and the firearm is possessed exclusively at the competition or performance;
  - is to a person under 18 years of age for lawful hunting, sporting, or educational purposes while under direct supervision of a responsible adult; or
  - occurs while legally hunting if the transferee has completed all required training, holds all required licenses or permits, and is not prohibited from possessing a firearm;
- acquisition of a firearm, other than a pistol, by inheritance; or acquisition of a pistol by inheritance within the preceding 60 days, after which time the person must either transfer the pistol or notify the DOL that the person is retaining the pistol.

## **Pistol Deliveries by Dealers**

The period after which a pistol may be delivered even if the background check has not been completed is changed to 10 days. The requirement that a pistol be securely wrapped and unloaded when delivered is eliminated.

## **Penalties**

A person who knowingly violates the background check requirements established in the initiative is guilty of a gross misdemeanor for a first offense, and a class C felony for each subsequent offense. Each firearm sold or transferred in violation of the initiative's background check requirements is a separate offense. A class C felony conviction for this offense is included in the definition of "serious offense" for purposes of the crime of unlawful possession of a firearm.

## **Other Provisions**

A resident of Washington who purchases a rifle or shotgun in another state is subject to the background check requirements of the initiative if any part of the transaction occurs in Washington, including online sales. A resident of another state who purchases a rifle or shotgun in Washington is subject to the state's procedures and background check requirements.

The DOL is given authority to adopt rules to implement the initiative. The DOL must report any violation of the firearms chapter by a dealer to the Bureau of Alcohol, Tobacco, Firearms & Explosives. In addition, the DOL may, after notice and a hearing, revoke the license of any dealer who violates the firearms chapter.

The retail sales tax does not apply to the sale or transfer of a firearm between two unlicensed persons if they have complied with all required background checks. A dealer who facilitates the sale or transfer of a firearm between unlicensed persons is not obligated to collect a use tax on the transaction.

**Effective Date:** The initiative takes effect 30 days after the election at which it is approved.

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