



Summary of Initiative 591

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 591. 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 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.

BACKGROUND

Initiative 591

Initiative 591 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 591 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. 591 concerns firearms.

Concise Description: This measure would prohibit government agencies from confiscating guns or other firearms from citizens without due process, or from requiring background checks on firearm recipients unless a uniform national standard is required.

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

Ballot Measure Summary

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

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 firearms 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 some 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 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.

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. The dealer

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 591. 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 measures.

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.

Due Process and Firearms Forfeiture Laws

Due Process. Both the federal and state constitutions prohibit the government from depriving a person of his or her property without due process of law. Due process requires the government to act in conformance with the law and according to fair procedures. The type of process that is necessary varies depending on the circumstances and the property interest affected. In general, due process requires notice and an opportunity to be heard by an impartial tribunal, such as a court or administrative hearing. Courts balance the following factors when analyzing due process issues: the private interest that will be affected; the risk of an erroneous deprivation of the interest; and the government's interest in maintaining the applicable procedures.

Firearms Forfeiture and Surrender Laws. There are various state statutes authorizing the government to seize and seek forfeiture of property, including firearms, due to the property's connection with criminal activity. In addition, there are statutes that specifically authorize the forfeiture or surrender of firearms in certain cases.

The firearms forfeiture statute allows courts to order forfeiture of a firearm under a number of circumstances, including if the firearm is proven to be: (1) concealed on a person without a CPL or found in the possession of a person prohibited from possessing firearms; (2) in the possession of a person at the time of commission of, or arrest for, a felony, or while criminal charges are pending; (3) in the possession of a person who was mentally incompetent when apprehended; or (4) used in the commission of certain crimes. 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 firearms surrender statute, a person who is subject to a protection order, no-contact order, or

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 591. 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 measures.

restraining order may be required to surrender his or her firearms or dangerous weapons while the order is in place.

SUMMARY

The firearms chapter is amended to add two new provisions relating to background checks on firearm purchasers and confiscation of 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 initiative.

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

Staff Contact: Edie Adams (786-7180)