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## SUBSTITUTE HOUSE BILL 1501

State of Washington 65th Legislature 2017 Regular Session

By House Judiciary (originally sponsored by Representatives Hansen, Hayes, Kagi, Smith, Tharinger, Clibborn, and Muri)

READ FIRST TIME 02/17/17.

- AN ACT Relating to protecting law enforcement and the public from persons who illegally attempt to obtain firearms; amending RCW 3 43.10.232; adding a new section to chapter 9.41 RCW; adding new 4 sections to chapter 43.43 RCW; adding a new section to chapter 36.28A 5 RCW; and creating a new section.
- 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- NEW SECTION. Sec. 1. A new section is added to chapter 9.41 RCW to read as follows:
- 9 (1) A dealer shall report to the Washington state patrol 10 information on each case where the dealer denies an application for 11 the purchase or transfer of a firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements of federal law, as the result of a 12 13 background check that indicates the applicant is ineligible to possess a firearm under state or federal law. The dealer shall report 14 the denied application information to the Washington state patrol 15 16 within two days of the denial in a format as prescribed by the 17 Washington state patrol. The reported information must include the identifying information of the applicant, the date of the application 18 and denial of the application, and other information as prescribed by 19 20 the Washington state patrol. In any case where the purchase or 21 transfer of a firearm is initially denied by the dealer as the result

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of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the dealer shall report the subsequent approval to the Washington state patrol within one day of the approval.

(2) Upon denying an application for the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm, the dealer shall provide the applicant with a copy of a notice form generated and distributed by the Washington state patrol under section 2(6) of this act, informing denied applicants of their right to appeal the denial.

## NEW SECTION. Sec. 2. A new section is added to chapter 43.43 RCW to read as follows:

- (1)(a) Upon implementation of this act, the Washington state patrol shall maintain a database that consists of information received under section 1 of this act pertaining to persons who have applied for the purchase or transfer of a firearm and were denied as the result of a background check that indicates the applicant is ineligible to possess a firearm under state or federal law. The database shall be accessible to law enforcement agencies and officers, including federally recognized Indian tribes, that have a connection to the Washington state patrol electronic database.
- (b) Upon receipt of information from a dealer under section 1 of this act that a person originally denied the purchase or transfer of a firearm as the result of a background check that indicates the applicant is ineligible to possess a firearm has subsequently been approved for the purchase or transfer, the Washington state patrol shall remove the record of the person's original denial from the database.
- (2) Upon receipt of documentation that a person has appealed a background check denial, the Washington state patrol shall immediately remove the record of the person initially reported under section 1 of this act from the database, and keep a separate record of the person's information for a period of one year or until such time as the appeal has been resolved. After a period of one year, the Washington state patrol shall notify the person that the person must provide documentation that his or her appeal is still pending or the record of the person's background check denial will be put back in the database. At any time, upon receipt of documentation that a

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person's appeal has been granted, the Washington state patrol shall remove any record of the person from the database.

- (3) The Washington state patrol shall establish a process for a person to petition to have his or her name removed from the database upon submission of satisfactory proof that the person is no longer ineligible to possess a firearm under state or federal law.
- (4) Subject to amounts appropriated for this specific purpose, the Washington state patrol shall investigate denied firearm purchase or transfer applications reported under section 1 of this act to determine whether the applicant knowingly attempted to acquire a firearm in violation of federal or state law or knowingly provided false information on the application for a firearm purchase or transfer. If, after investigation, the Washington state patrol believes the applicant has violated state law, the Washington state patrol shall refer the case to the local prosecuting authority or tribal prosecuting authority, if appropriate. If the local or tribal prosecuting authority declines to file the case, the Washington state patrol shall refer the case to the office of the attorney general for prosecution.
- (5) The database shall be used only for law enforcement purposes and for the purposes of section 5 of this act and is not subject to public disclosure under chapter 42.56 RCW.
- (6) The Washington state patrol shall generate and distribute a notice form to all firearm dealers, to be provided by the dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. The notice form must contain the following statements:

State law requires that I transmit the following information to the Washington state patrol as a result of your firearm purchase or transfer denial within two days of the denial:

- (a) Identifying information of the applicant;
- (b) The date of the application and denial of the application;
- (c) Other information as prescribed by the Washington state patrol.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal

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- investigation by the Washington state patrol and/or a local law enforcement agency.
- 3 The notice form shall also contain information directing the
- 4 applicant to a web site describing the process of appealing a
- 5 national criminal background check denial through the federal bureau
- 6 of investigation and refer the applicant to local law enforcement for
- 7 information on a denial based on a state background check. The notice
- 8 form shall also contain a phone number for a contact at the
- 9 Washington state patrol to direct the person to resources regarding
- 10 an individual's right to appeal a background check denial.
- 11 (7) The Washington state patrol shall adopt rules as are
- 12 necessary to carry out the purposes of this act.
- NEW SECTION. Sec. 3. A new section is added to chapter 43.43
- 14 RCW to read as follows:
- The Washington state patrol shall prepare an annual report on the
- 16 number of denied firearms sales or transfers reported under section 1
- 17 of this act. The report shall indicate the number of cases in which a
- 18 person was denied a firearms sale or transfer, the number of cases
- 19 where the denied sale or transfer was investigated for potential
- 20 criminal prosecution, and the number of cases where an arrest was
- 21 made, the case was referred for prosecution, and a conviction was
- 22 obtained. The Washington state patrol shall submit the report to the
- 23 attorney general and the appropriate committees of the legislature on
- 24 or before December 31st of each year.
- 25 **Sec. 4.** RCW 43.10.232 and 1986 c 257 s 16 are each amended to
- 26 read as follows:
- 27 (1) The attorney general shall have concurrent authority and
- 28 power with the prosecuting attorneys to investigate crimes and
- 29 initiate and conduct prosecutions upon the request of or with the
- 30 concurrence of any of the following:
- 31 (a) The county prosecuting attorney of the jurisdiction in which
- 32 the offense has occurred;
- 33 (b) The governor of the state of Washington; ((or))
- 34 (c) A majority of the committee charged with the oversight of the
- 35 organized crime intelligence unit; or

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1 (d) The Washington state patrol when referring cases under section 2 of this act if case referral was declined by the local prosecuting authority or tribal prosecuting authority. 3

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- (2) Such request or concurrence shall be communicated in writing to the attorney general.
- (3) Prior to any prosecution by the attorney general under this section, the attorney general and the county in which the offense occurred shall reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with any such prosecution.
- NEW SECTION. Sec. 5. A new section is added to chapter 36.28A 11 12 RCW to read as follows:
  - (1)(a) When funded, the Washington association of sheriffs and police chiefs shall create and operate a statewide automated protected person notification system to automatically notify a registered person via the registered person's choice of telephone or email when a respondent subject to a court order specified in (b) of this subsection has attempted to purchase or acquire a firearm and been denied based on a background check that indicates the respondent is ineligible to possess a firearm under state or federal law. The system must permit a person to register for notification, or a registered person to update the person's registration information, for the statewide automated protected person notification system by calling a toll-free telephone number or by accessing a public web site.
  - (b) The notification requirements of this section apply to any court order issued under chapter 7.92 RCW and RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.10.040, 26.10.115, 26.26.130, 26.26.590, 26.50.060, or 26.50.070, and any foreign protection order filed with a Washington court pursuant to chapter 26.52 RCW, where the order prohibits the respondent from possessing firearms or where by operation of law the respondent is ineligible to possess firearms during the term of the order.
  - (2) The Washington state patrol shall ensure that the Washington association of sheriffs and police chiefs is provided access to the data necessary for the purposes of implementation of the notification requirements of this section.

p. 5 SHB 1501 (3) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated protected person notification system in this section, so long as the release or failure to release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

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- 12 (4) Information and records received by the Washington 13 association of sheriffs and police chiefs under this section, 14 including information a person submits to register and participate in 15 the statewide automated protected person notification system, may be 16 used only for the purposes of this section and are exempt from public 17 inspection and copying under chapter 42.56 RCW.
- NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2017, in the omnibus appropriations act, this act is null and void.

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