

SJR

5



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

April 14, 2003

MEMORANDUM

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Senator Thomas Wagoner *T. Wagoner*

Subject: CS SJR5(STA) – committee hearing request

I would appreciate your hearing CS for SJR5 (STA) in the House Judiciary Committee at your earliest convenience.

I have attached the sponsor statement, and other information pertaining to this measure.

If you have any questions please call my staff Amy Seitz, 465-3421. Thank you.



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Senator Tom Wagoner Sponsor Statement

SJR 5 - BRADY BILL INSTANT CHECK SYSTEM

In 1993 the United States Congress passed the Brady Handgun Bill, which established a system to keep firearms out of the hands of criminals. The "national instant criminal background check system", established by the Brady Bill, is used to check for a criminal background during firearm purchases. To ensure that non-criminal records were not retained, language was included addressing this issue. It clearly states that the intent is to destroy all records relating to non-criminal persons, except the identifying number and the date the number was assigned.

The problem arose when the Administration gave this clearly stated section a novel interpretation. Instead of immediately destroying all records of legitimate firearm purchases, these records would be retained for "audit" purposes and may be retained for a maximum of six months.

When the Administration extended the holding of non-criminal records for up to one hundred and eighty days, they violated both the spirit and letter of the Brady Handgun Bill.

This Senate Joint Resolution urges the President of the United States and the Congress to ensure that federal agencies do not use the Brady bill Act as a means to unlawfully collect data about legitimate firearm owners. Also, this resolution requests that the Congress make necessary changes to prevent this from occurring in the future.

I respectfully ask you to join me in supporting this resolution.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SJR 5
 (S) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title: "Urging the President of the United States and the Congress to act to ensure that federal agencies...." BRU: Legislative Council
 Component: Session Expenses
 Sponsor: Senators Wagoner, Therriault,.....
 Requester: Senator Taylor Component No. 782

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SJR 5 has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director Phone 465-3852
 Division: Administrative Services Date/Time 2/11/03 2:19 PM
 Approved by: Pamela A. Varni, Executive Director Date 2/11/2003
 Agency: Legislative Affairs Agency

(1)(A)(i) with respect to the statement. "(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law-- "(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III); "(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and "(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

"(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

"(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages-- "(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or "(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

"(8) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public." (2) HANDGUN DEFINED.--Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(29) The term 'handgun' means-- "(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and "(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled."

(b) PERMANENT PROVISION.--Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

"(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless-- "(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act; "(B)(i) the system provides the licensee with a unique identification number; or "(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and "(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of a firearm would not violate section 922 (g) or (n) or State law, the system shall-- "(A) assign a unique identification number to the transfer; "(B) provide the licensee with the number; and "(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

"(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if-- "(A)(i) such other person has presented to the licensee a permit that-- "(I) allows such other person to possess or acquire a firearm; and "(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and "(ii) the law of the State

it shall be unlawful for any licensed dealer, manufacturer, or importer to transfer a firearm to any other person who is not licensed unless prior to the completion of the transfer:

A. the prospective purchaser has presented to the licensee a valid picture identification and the licensee has contacted NICBCS to verify that the purchaser is not a disqualified person. If NICBCS verifies that the purchaser is not a disqualified individual the sale may proceed.

- When a purchaser is approved, a unique identification number shall be assigned to the transaction. The licensee shall record the number on the Form 4473 as proof that NICBCS has been contacted.

- NICBCS shall record only the transaction number and the date on which the query took place. No other information related to a query concerning an individual who is not disqualified from receiving a firearm may be retained.

** In the event that the licensee contacts NICBCS and the system is unable to respond, the sale must be delayed for a time period not to exceed three days.

B. A sale may also proceed immediately if:

- the purchaser has presented a permit, that has been issued within the last five years as a result of the verification by an authorized government official that the purchaser is eligible to possess or acquire a handgun;

- the transfer has been approved by the Secretary of the Treasury (would apply only to those firearms which would fall under the purview of the National Firearms Act); or,

- by reason of geographic circumstance (as defined by the bill and certified by the Secretary of the Treasury upon application of the licensee) contacting NICBCS would be impracticable.

** An individual who is denied a firearm because of information provided by NICBCS shall, upon request, be provided with the information related to that denial within five days of the request.

C. If a licensee allows a transfer to take place without contacting the system, and the information that was available would have disqualified the purchaser from having a firearm, the Secretary may, after notice and hearing, revoke or suspend a Federal Firearms License for a period not to exceed six months and may impose a civil fine of not more than \$5,000. D. Whoever knowingly violates this Act (such as by selling a firearm to an individual who may lawfully possess it but without observing the letter of the law) may be fined not more than \$1,000, or imprisoned for not more than one year, or both.

IV. REMEDY FOR ERRONEOUS DENIAL OF FIREARMS

Any person denied a firearm due to the provision of erroneous information or who is denied a firearm but is not prohibited from receipt of a firearm, may bring an action against the state or political subdivision responsible for providing the erroneous information or for the denial, directing that the information be corrected or the transfer approved. In any action the court may award reasonable attorney's fees as part of the costs.

V. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS

There are authorized to be appropriated \$200 million for fiscal years 1994 and all years thereafter to expedite the improvement of state criminal history records and access.

OTHER PROVISIONS

A. MULTIPLE FIREARMS PURCHASE REPORTING NOTIFICATION TO STATE AND LOCAL POLICE.