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**SECOND SUBSTITUTE HOUSE BILL 2467**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Hansen, Irwin, Griffey, Barkis, and Wylie)

1 AN ACT Relating to establishing a centralized single point of  
2 contact background check system for firearms transfers; amending RCW  
3 9.41.114, 43.43.823, 36.28A.405, and 36.28A.420; adding new sections  
4 to chapter 43.43 RCW; adding a new section to chapter 9.41 RCW;  
5 repealing RCW 36.28A.400; and providing a contingent effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43  
8 RCW to read as follows:

9 (1) The Washington state patrol shall establish a firearms  
10 background check unit to serve as a centralized single point of  
11 contact for dealers to conduct background checks for firearms sales  
12 or transfers required under chapter 9.41 RCW and the federal Brady  
13 handgun violence prevention act (18 U.S.C. Sec. 921 et seq.). The  
14 Washington state patrol shall establish an automated firearms  
15 background check system to conduct background checks on applicants  
16 for the purchase or transfer of a firearm. The system must include  
17 the following characteristics:

18 (a) Allow a dealer to contact the Washington state patrol through  
19 a web portal or other electronic means and by telephone to request a  
20 background check of an applicant for the purchase or transfer of a  
21 firearm;

1 (b) Provide a dealer with a notification that a firearm purchase  
2 or transfer application has been received;

3 (c) Assign a unique identifier to the background check inquiry;

4 (d) Provide an automated response to the dealer indicating  
5 whether the transfer may proceed or is denied, or that the check is  
6 indeterminate and will require further investigation;

7 (e) Include measures to ensure data integrity and the  
8 confidentiality and security of all records and data transmitted and  
9 received by the system; and

10 (f) Include a performance metrics tracking system to evaluate the  
11 performance of the background check system.

12 (2) Upon receipt of a request from a dealer for a background  
13 check in connection with the sale or transfer of a firearm, the  
14 Washington state patrol shall:

15 (a) Provide the dealer with a notification that a firearm  
16 transfer application has been received;

17 (b) Conduct a check of the national instant criminal background  
18 check system and the following additional records systems to  
19 determine whether the transferee is prohibited from possessing a  
20 firearm under state or federal law: (i) The Washington crime  
21 information center and Washington state identification system; (ii)  
22 the health care authority electronic database; (iii) the federal  
23 bureau of investigation national data exchange database and any  
24 available repository of statewide local law enforcement record  
25 management systems information; (iv) the administrative office of the  
26 courts case management system; and (v) other databases or resources  
27 as appropriate;

28 (c) Perform an equivalency analysis on criminal charges in  
29 foreign jurisdictions to determine if the applicant has been  
30 convicted as defined in RCW 9.41.040(3) and if the offense is  
31 equivalent to a Washington felony as defined in RCW 9.41.010(8);

32 (d) Notify the dealer without delay that the records indicate the  
33 individual is prohibited from possessing a firearm and the transfer  
34 is denied or that the individual is approved to complete the  
35 transfer. If the results of the background check are indeterminate,  
36 the Washington state patrol shall notify the dealer of the delay and  
37 conduct necessary research and investigation to resolve the inquiry;  
38 and

39 (e) Provide the dealer with a unique identifier for the inquiry.

1 (3) The Washington state patrol may hold the delivery of a  
2 firearm to an applicant under the circumstances provided in RCW  
3 9.41.090 (4) and (5).

4 (4) The Washington state patrol shall require a dealer to charge  
5 each firearm purchaser or transferee a fee for performing background  
6 checks in connection with firearms transfers. The fee must be set at  
7 an amount necessary to cover the annual costs of operating and  
8 maintaining the firearm background check system but shall not exceed  
9 eighteen dollars. The Washington state patrol shall transmit the fees  
10 collected to the state treasurer for deposit in the state firearms  
11 background check system account created in section 3 of this act. It  
12 is the intent of the legislature that once the state firearm  
13 background check system is established, the fee established in this  
14 section will replace the fee required in RCW 9.41.090 (7).

15 (5) The Washington state patrol shall establish a procedure for a  
16 person who has been denied a firearms transfer as the result of a  
17 background check to appeal the denial to the Washington state patrol  
18 and to obtain information on the basis for the denial and procedures  
19 to review and correct any erroneous records that led to the denial.

20 (6) The Washington state patrol shall work with the  
21 administrative office of the courts to build a link between the  
22 firearm background check system and the administrative office of the  
23 courts case management system for the purpose of accessing court  
24 records to determine a person's eligibility to possess a firearm.

25 (7) Upon establishment of the firearm background check system  
26 under this section, the Washington state patrol shall notify each  
27 dealer in the state of the existence of the system, and the dealer  
28 must use the system to conduct background checks for firearm sales or  
29 transfers beginning on the date that is thirty days after issuance of  
30 the notification.

31 (8) The Washington state patrol shall consult with the Washington  
32 background check advisory board created in section 2 of this act in  
33 carrying out its duties under this section.

34 (9) All records and information prepared, obtained, used, or  
35 retained by the Washington state patrol in connection with a request  
36 for a firearm background check are exempt from public inspection and  
37 copying under chapter 42.56 RCW.

38 (10) The Washington state patrol may adopt rules necessary to  
39 carry out the purposes of this section.

1 (11) For the purposes of this section, "dealer" has the same  
2 meaning as given in RCW 9.41.010.

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

5 (1) There is created the Washington background check advisory  
6 board. The board shall consist of the following members, appointed by  
7 the governor:

8 (a) The chief of the Washington state patrol or the chief's  
9 designee;

10 (b) The executive director of the Washington association of  
11 sheriffs and police chiefs or the executive director's designee;

12 (c) One sheriff;

13 (d) One police chief;

14 (e) One person engaged in the business of lawfully selling  
15 firearms at retail in this state who holds a federal firearms license  
16 under 18 U.S.C. Sec. 923(a); and

17 (f) One member of the general public.

18 (2) The primary purpose of the board is to ensure that the  
19 Washington state patrol firearms background check unit established in  
20 section 1 of this act is administered efficiently and effectively,  
21 and in a manner that honors individual firearms rights while  
22 preventing prohibited persons from obtaining firearms.

23 (3) The board shall initially convene within ninety days of the  
24 effective date of this section, and shall meet not less than monthly  
25 until such time that the Washington state patrol deems the firearms  
26 background check unit is operational. After the Washington state  
27 patrol deems the firearms background check unit is operational, the  
28 board shall meet quarterly, unless the board has no business to  
29 conduct during that quarter.

30 (4) The board shall elect from among its membership a chairperson  
31 and other such officers from among its membership as it deems  
32 appropriate.

33 (5) Members of the board shall serve terms of four years each on  
34 a staggered schedule to be established by the first board. For  
35 purposes of initiating a staggered schedule of terms, some members of  
36 the first board may initially serve two years and some members may  
37 initially serve four years.

38 (6) The board shall:

1 (a) Provide input and feedback regarding the establishment and  
2 operation of the firearms background check unit established in  
3 section 1 of this act;

4 (b) Provide input on the development of the firearms background  
5 check unit budget prior to its formal submission to the office of  
6 financial management pursuant to RCW 43.88.030;

7 (c) Be consulted with prior to the proposal of any rule relating  
8 to the firearms background check unit and prior to the adoption of  
9 any rule relating to the firearms background check unit;

10 (d) Require reports from the chief of the Washington state patrol  
11 on matters pertaining to the firearms background check unit; and

12 (e) Report to the governor and appropriate committees of the  
13 legislature on or before December 31st of each year on the activities  
14 of the board and the firearms background check unit for the preceding  
15 fiscal year.

16 (7) Members of the board shall serve without compensation, but  
17 shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and  
18 43.03.060.

19 (8) The Washington state patrol shall provide the staffing and  
20 budgetary resources necessary for the board to properly fulfill its  
21 duties.

22 (9) Members serving in their official capacity on the Washington  
23 background check advisory board, or either their employer or  
24 employers or other entity that selected the members to serve, are  
25 immune from a civil action based on an act performed in good faith.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.43  
27 RCW to read as follows:

28 The state firearms background check system account is created in  
29 the custody of the state treasurer. All receipts under section 1 of  
30 this act must be deposited into the account. Expenditures from the  
31 account may be used only for the creation, operation, and maintenance  
32 of the automated firearms background check system under section 1 of  
33 this act. Only the chief of the Washington state patrol or the  
34 chief's designee may authorize expenditures from the account. The  
35 account is subject to allotment procedures under chapter 43.88 RCW,  
36 but an appropriation is not required for expenditures.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW  
38 to read as follows:

1 (1) Beginning on the date that is thirty days after the  
2 Washington state patrol issues a notification to dealers that a state  
3 firearms background check system is established within the Washington  
4 state patrol under section 1 of this act, a dealer shall use the  
5 state firearms background check system to conduct background checks  
6 for all firearms transfers. A dealer may not sell or transfer a  
7 firearm to an individual unless the dealer first contacts the  
8 Washington state patrol for a background check to determine the  
9 eligibility of the purchaser or transferee to possess a firearm under  
10 state and federal law and the requirements and time periods  
11 established in RCW 9.41.090 and 9.41.092 have been satisfied. When an  
12 applicant applies for the purchase or transfer of a pistol or  
13 semiautomatic assault rifle, a dealer shall comply with all  
14 requirements of this chapter that apply to the sale or transfer of a  
15 pistol or semiautomatic rifle. The purchase or transfer of a firearm  
16 that is not a pistol or semiautomatic assault rifle must be processed  
17 in the same manner and under the same requirements of this chapter  
18 that apply to the sale or transfer of a pistol, except that the  
19 provisions of RCW 9.41.129, and the requirement in RCW 9.41.110(9)(b)  
20 concerning transmitting application records to the director of  
21 licensing, shall not apply to these transactions.

22 (2) A dealer shall charge a purchaser or transferee a background  
23 check fee in an amount determined by the Washington state patrol and  
24 remit the proceeds from the fee to the Washington state patrol on a  
25 monthly basis.

26 (3) This section does not apply to sales or transfers to licensed  
27 dealers or to the sale or transfer of an antique firearm.

28 **Sec. 5.** RCW 9.41.114 and 2017 c 261 s 1 are each amended to read  
29 as follows:

30 ~~((1) A dealer shall report to the Washington association of~~  
31 ~~sheriffs and police chiefs information on each instance where the~~  
32 ~~dealer denies an application for the purchase or transfer of a~~  
33 ~~firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements~~  
34 ~~of federal law, as the result of a background check or completed and~~  
35 ~~submitted firearm purchase or transfer application that indicates the~~  
36 ~~applicant is ineligible to possess a firearm under state or federal~~  
37 ~~law. The dealer shall report the denied application information to~~  
38 ~~the Washington association of sheriffs and police chiefs within five~~  
39 ~~days of the denial in a format as prescribed by the Washington~~

1 ~~association of sheriffs and police chiefs. The reported information~~  
2 ~~must include the identifying information of the applicant, the date~~  
3 ~~of the application and denial of the application, and other~~  
4 ~~information or documents as prescribed by the Washington association~~  
5 ~~of sheriffs and police chiefs. In any case where the purchase or~~  
6 ~~transfer of a firearm is initially denied by the dealer as the result~~  
7 ~~of a background check that indicates the applicant is ineligible to~~  
8 ~~possess a firearm, but the purchase or transfer is subsequently~~  
9 ~~approved, the dealer shall report the subsequent approval to the~~  
10 ~~Washington association of sheriffs and police chiefs within one day~~  
11 ~~of the approval.~~

12 ~~(2))~~ Upon denying an application for the purchase or transfer of  
13 a firearm as a result of a background check or completed and  
14 submitted firearm purchase or transfer application that indicates the  
15 applicant is ineligible to possess a firearm under state or federal  
16 law, the dealer shall:

17 ~~((a))~~ (1) Provide the applicant with a copy of a notice form  
18 generated and distributed by the Washington state patrol under RCW  
19 43.43.823~~((5))~~ (6), informing denied applicants of their right to  
20 appeal the denial; and

21 ~~((b))~~ (2) Retain the original records of the attempted purchase  
22 or transfer of a firearm for a period not less than six years.

23 **Sec. 6.** RCW 43.43.823 and 2018 c 22 s 11 are each amended to  
24 read as follows:

25 ~~(1) ((Upon receipt of the information from the Washington~~  
26 ~~association of sheriffs and police chiefs pursuant to RCW 36.28A.400,~~  
27 ~~the)) The Washington state patrol shall report each instance where an~~  
28 ~~application for the purchase or transfer of a firearm is denied as~~  
29 ~~the result of a background check that indicates the applicant is~~  
30 ~~ineligible to possess a firearm to the local law enforcement agency~~  
31 ~~in the jurisdiction where the attempted purchase or transfer took~~  
32 ~~place. The reported information must include the identifying~~  
33 ~~information of the applicant, the date of the application and denial~~  
34 ~~of the application, the basis for the denial of the application, and~~  
35 ~~other information deemed appropriate by the Washington state patrol.~~

36 (2) The Washington state patrol must incorporate the information  
37 ~~concerning any person whose application for the purchase or transfer~~  
38 ~~of a firearm is denied as the result of a background check into its~~  
39 ~~electronic database accessible to law enforcement agencies and~~

1 officers, including federally recognized Indian tribes, that have a  
2 connection to the Washington state patrol electronic database.

3 ~~((2))~~ (3) Upon ~~((receipt of documentation that a person has~~  
4 ~~appealed))~~ appeal of a background check denial, the Washington state  
5 patrol shall immediately remove the record of the person ~~((initially~~  
6 ~~reported pursuant to RCW 36.28A.400))~~ from its electronic database  
7 accessible to law enforcement agencies and officers ~~((The Washington~~  
8 ~~state patrol must))~~ and keep a separate record of the person's  
9 information ~~((for a period of one year or))~~ until such time as the  
10 appeal has been resolved. ~~((Every twelve months, the Washington state~~  
11 ~~patrol shall notify the person that the person must provide~~  
12 ~~documentation that his or her appeal is still pending or the record~~  
13 ~~of))~~ If the appeal is denied, the Washington state patrol shall put  
14 the person's background check denial ~~((will be put))~~ information back  
15 in its electronic database accessible to law enforcement agencies and  
16 officers. ~~((At any time, upon receipt of documentation that a~~  
17 ~~person's appeal has been granted, the Washington state patrol shall~~  
18 ~~remove any record of the person's denied firearms purchase or~~  
19 ~~transfer application from its electronic database accessible to law~~  
20 ~~enforcement agencies and officers.~~

21 ~~(3))~~ (4) Upon receipt of satisfactory proof that a person ~~((who~~  
22 ~~was reported to the Washington state patrol pursuant to RCW~~  
23 ~~36.28A.400))~~ is no longer ineligible to possess a firearm under state  
24 or federal law, the Washington state patrol must remove any record of  
25 the person's denied firearms purchase or transfer application from  
26 its electronic database accessible to law enforcement agencies and  
27 officers.

28 ~~((4) Upon receipt of notification from the Washington~~  
29 ~~association of sheriffs and police chiefs that a person originally~~  
30 ~~denied the purchase or transfer of a firearm as the result of a~~  
31 ~~background check or completed and submitted firearm purchase or~~  
32 ~~transfer application that indicates the applicant is ineligible to~~  
33 ~~possess a firearm under state or federal law has subsequently been~~  
34 ~~approved for the purchase or transfer, the))~~ (5) In any case where  
35 the purchase or transfer of a firearm is initially denied as the  
36 result of a background check that indicates the applicant is  
37 ineligible to possess a firearm, but the purchase or transfer is  
38 subsequently approved, the Washington state patrol must remove any  
39 record of the person's denied firearms purchase or transfer  
40 application from its electronic database accessible to law

1 enforcement agencies and officers within five business days and  
2 report the subsequent approval to the local law enforcement agency  
3 that received notification of the original denial.

4 ~~((5))~~ (6) The Washington state patrol shall generate and  
5 distribute a notice form to all firearm dealers, to be provided by  
6 the dealers to applicants denied the purchase or transfer of a  
7 firearm as a result of a background check that indicates the  
8 applicant is ineligible to possess a firearm. The notice form must  
9 contain the following statements:

10 State law requires that ~~((7))~~ the Washington state patrol  
11 transmit the following information to the ~~((Washington~~  
12 ~~association of sheriffs and police chiefs))~~ local law  
13 enforcement agency as a result of your firearm purchase or  
14 transfer denial within five days of the denial:

15 (a) Identifying information of the applicant;

16 (b) The date of the application and denial of the  
17 application;

18 (c) The basis for the denial; and

19 (d) Other information as ~~((prescribed))~~ determined by the  
20 Washington ~~((association of sheriffs and police chiefs))~~ state  
21 patrol.

22 If you believe this denial is in error, and you do not  
23 exercise your right to appeal, you may be subject to criminal  
24 investigation by the Washington state patrol and/or a local  
25 law enforcement agency.

26 The notice form shall also contain information directing the  
27 applicant to a web site describing the process of appealing a  
28 ~~((national instant criminal))~~ background check system denial  
29 ~~((through the federal bureau of investigation))~~ and refer the  
30 applicant to ~~((local law enforcement))~~ the Washington state patrol  
31 for information on a denial based on a state background check. The  
32 notice form shall also contain a phone number for a contact at the  
33 Washington state patrol to direct the person to resources regarding  
34 an individual's right to appeal a background check denial.

35 ~~((6))~~ (7) The Washington state patrol shall provide to the  
36 Washington association of sheriffs and police chiefs any information  
37 necessary for the administration of the grant program in RCW  
38 36.28A.420, providing notice to a protected person pursuant to RCW

1 36.28A.410, or preparation of the report required under RCW  
2 36.28A.405.

3 (8) The Washington state patrol may adopt rules as are necessary  
4 to carry out the purposes of this section.

5 **Sec. 7.** RCW 36.28A.405 and 2017 c 261 s 4 are each amended to  
6 read as follows:

7 Subject to the availability of amounts appropriated for this  
8 specific purpose, the Washington association of sheriffs and police  
9 chiefs shall prepare an annual report on the number of denied  
10 firearms sales or transfers reported pursuant to chapter 261, Laws of  
11 2017 and RCW 43.43.823. The report shall indicate the number of cases  
12 in which a person was denied a firearms sale or transfer, the number  
13 of cases where the denied sale or transfer was investigated for  
14 potential criminal prosecution, and the number of cases where an  
15 arrest was made, the case was referred for prosecution, and a  
16 conviction was obtained. The Washington (~~state patrol~~) association  
17 of sheriffs and police chiefs shall submit the report to the  
18 appropriate committees of the legislature on or before December 31st  
19 of each year.

20 **Sec. 8.** RCW 36.28A.420 and 2017 c 261 s 6 are each amended to  
21 read as follows:

22 (1) Subject to the availability of amounts appropriated for this  
23 specific purpose, the Washington association of sheriffs and police  
24 chiefs shall establish a grant program for local law enforcement  
25 agencies to conduct criminal investigations regarding persons who  
26 illegally attempted to purchase or transfer a firearm within their  
27 jurisdiction.

28 (2) Each grant applicant must be required to submit reports to  
29 the Washington association of sheriffs and police chiefs that  
30 indicate the number of cases in which a person was denied a firearms  
31 sale or transfer, the number of cases where the denied sale or  
32 transfer was investigated for potential criminal prosecution, and the  
33 number of cases where an arrest was made, the case was referred for  
34 prosecution, and a conviction was obtained.

35 (3) Information and records prepared, owned, used, or retained by  
36 the Washington association of sheriffs and police chiefs pursuant to  
37 chapter 261, Laws of 2017 and RCW 43.43.823 are exempt from public  
38 inspection and copying under chapter 42.56 RCW.

1        NEW SECTION.    **Sec. 9.**    RCW 36.28A.400 (Denied firearm transaction  
2 reporting system—Purge of denial records upon subsequent approval—  
3 Public disclosure exemption—Destruction of information) and 2017 c  
4 261 s 2 are each repealed.

5        NEW SECTION.    **Sec. 10.**    Sections 5 through 9 of this act take  
6 effect on the date that is thirty days after the Washington state  
7 patrol issues a notification to dealers that a state firearms  
8 background check system is established under section 1 of this act.  
9 The Washington state patrol shall provide written notice of the  
10 effective date of sections 5 through 9 of this act to the chief clerk  
11 of the house of representatives, the secretary of the senate, the  
12 office of the code reviser, and others as deemed appropriate by the  
13 Washington state patrol.

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