

The State Bureau of Investigation, in consultation with the Department of Information Technology, submits the following report in compliance with NC Session Law 2015-195 (H562) as written below:

***SECTION 10.5.** The Department of Public Safety, in consultation with the Office of Information Technology Services and the Federal Bureau of Investigation, shall study the development of a system to allow a background check to be conducted in private transfers of firearms. The study shall consider methods that would allow the seller or transferor to access the Criminal Justice Law Enforcement Automated Data Services (CJLEADS), the National Instant Criminal Background Check System (NICS), or another similar system that would provide information to the seller or transferor regarding the purchaser or transferee's eligibility to purchase a pistol.*

The Department shall report its findings and any recommended legislation to the Joint Legislative Oversight Committee on Justice and Public Safety on or before January 1, 2019.

Background

Gun laws in North Carolina regulate the sale, possession, and use of firearms and ammunition in the State. North Carolina state law establishes both a permit to purchase mandate and an optional concealed handgun permit. N.C. Gen. Stat. § 14-402 authorizes Sheriffs to issue county residents a one-time use permit to receive or purchase a firearm. N.C. Gen. Stat. § 14-415 allows qualifying residents of North Carolina to obtain a permit to carry a concealed handgun from the Sheriff of the applicant's home county. Upon issuance, both permits are valid for five years unless it is revoked. Currently, in order to buy a firearm, whether from a licensed dealer or a private individual, citizens of North Carolina are required to either obtain and present a purchase permit from the sheriff of the county in which they reside, or obtain and present an active North Carolina concealed handgun permit. Before issuing a purchase permit, the sheriff's office will subject the applicant to a background check. In addition to the background check required for a purchase permit, a concealed handgun permit requires a fingerprint-based background check and satisfactory completion of an 8-hour handgun safety course.

In North Carolina, private sellers, who are not licensed dealers, are currently not authorized to request a background check be conducted by a law enforcement agency or a licensed federal firearms dealer on the purchaser/transferee prior to transferring a handgun. However, it is a Class 2 misdemeanor for a private seller to sell, give away, or transfer a handgun to anyone unless a purchase permit is first obtained by the purchaser or receiver or a valid North Carolina concealed handgun permit is held by the purchaser or receiver.

Brady Handgun Violence Prevention Act

In addition to state requirements, US Congress passed the Brady Handgun Violence Prevention Act (Brady Act) establishing federal requirements on firearms purchases in the United States. Upon becoming law on February 28, 1994, the Brady Act established numerous procedures to govern purchases of firearms from federally licensed firearms dealers. Mandated by the Brady Act and launched by the FBI on November 30, 1998, the National Instant Background Check System

(NICS) is used by law enforcement agencies and federal firearms licensees to instantly determine whether a prospective buyer is eligible to buy firearms. Before completing the purchase or transfer, a NICS check is conducted to ensure that each customer does not have a criminal record or is not otherwise ineligible to make a purchase. Most NICS checks are determined within minutes. If a determination is not obtained within three business days then the transfer may legally be completed.

It is important to note that federal law only authorizes access to NICS by law enforcement agencies and licensed federal firearms dealers. To date, the general public does not have the ability to conduct a NICS check.

Effective December 1, 1995, the Bureau of Alcohol, Tobacco, and Firearms (ATF) concluded that the handgun permitting scheme established in North Carolina complies with the exceptions provided in the Brady Law. As a result of this determination, North Carolina's purchase permit is recognized as a suitable alternative method for the purchase of a firearm in North Carolina from a federally licensed firearms dealer under Brady Act.

Therefore, all firearm sales from federally licensed dealers after November 30, 1998 must include either a NICS inquiry or a recognized alternative, such as a valid North Carolina-issued pistol purchase permit.

North Carolina is a partial point of contact state for NICS. Being a partial point of contact state means firearms dealers must contact the FBI to process the background check required by federal law if the firearm being transferred is a long gun. If the firearm being transferred is a handgun, the seller (regardless of whether or not he or she is a firearms dealer) must verify that the purchaser holds either a permit to purchase a handgun or a concealed weapons permit.

Other State Provisions Addressing a Private Party Transfer

As previously noted, N.C. Gen. Stat. § 14-402 prohibits the transfer of a handgun to an individual who has not obtained a permit, which also applies to private party transfers. Nineteen (19) states and the District of Columbia have provisions concerning private party transfers.

A brief explanation of each states' private party transfer provision is included as Attachment 1.

Federal Legislation Concerning General Public Direct Access to NICS

Since federal law only authorizes access to NICS for law enforcement agencies and licensed federal firearms dealers, there does not exist a mechanism, portal, or scheme for the general public to directly access NICS for private party transfers.

The US Congress has drafted several pieces of legislation that would expand background checks for firearms transfers. The most recent legislation was the *Background Check Expansion Act* introduced during the 115th Congress by Senator Christopher Murphy of Connecticut. However, this legislation did not advance through Congress. It is expected that multiple pieces of legislation

addressing the use of NICS will be introduced during the next Congress. General public direct access to NICS continues to be a topic discussed in Congress and may likely be added to several bills next session.

Recommendation

Monitor bills, introduced to the US Congress, which will allow direct access by the public to NICS.

Attachment 1
Private Party Firearms Sale Provisions by State

| State | State Regulatory Reference | Private Party Transfer Provision |
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| California | State Penal Code § 28050 | When neither party is a licensed dealer, the transfer must be conducted through a licensed California dealer who is required to conduct a background check. |
| Colorado | State Statute § 18-12-112 | Seller is required to arrange for a licensed gun dealer to obtain a background check which must include a NICS check. |
| Connecticut | State Statute § 29-33c | All handgun transfers must wait for authorization from the state's regulatory agency which conducts the background check. Long guns (i.e. rifles and shotguns) may only be transferred by a federally licensed dealer, who must conduct a background check; prospective buyer must present gun eligibility certificate prior to the background check. |
| Delaware | State Code Title 11 § 1448B | Any unlicensed seller of firearms must have a background check conducted through a licensed firearms dealer. All parties must appear in person at the licensed dealer's place of business. |
| District of Columbia | Code § 7-2505.02 | Seller is required to arrange for a licensed gun dealer to obtain a background check on the prospective buyer through NICS. |
| Florida | Constitution Article VIII, § 5(b) | Background checks are not required by the state. However, county governments have the authority to require background checks and a 3- to 5-day waiting period for private firearms transfers. |
| Hawaii | State Statute § 134-2,3 | Transferee must acquire a permit to include a NICS check to legally obtain any firearm in Hawaii. |

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| Illinois | 430 Illinois Statute 65/2 | Transferee must have a valid state-issued Firearm Owner's Identification Card (FOID), for which a background check is conducted. Exceptions include gift transfers within the family. |
| Iowa | State Code § 724-15(1) | Transferee must obtain a permit prior to acquiring ownership of a handgun, which includes a NICS check (must renew annually). |
| Maryland | State Public Safety Code § 5-101 | All regulated firearms (handguns and assault weapons) must be transferred through a licensed dealer or local law enforcement agency, which require background checks. |
| Massachusetts | State Statute 140 § 128A | None for purchase. However, private sellers may check the validity of the buyer's state-issued Firearm Identification Card prior to the transaction. |
| Michigan | State Statute § 28.422a | Prospective purchasers of handguns must have either a handgun purchase license or a conceal carry license, both of which require a background check. No background check requirement for private sales of rifles or shotguns. |
| Minnesota | State Statute § 624.7132 | All sales of handguns and semiautomatic, assault-style rifles must be recorded with the local police department, which will conduct a background check. |
| Nebraska | State Statute § 69-2403 | The transfer of a handgun is not authorized without first obtaining either a handgun certificate or concealed handgun permit, both of which require a background check. No background check requirement for private sales of rifles or shotguns. |
| New Jersey | State Statute § 2C:58-3a | Buyers of handguns must first obtain a permit and buyers of rifles and shotguns must first obtain a Firearms Purchaser Identification Card (FPIC), both of which require state and federal background checks. |

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| New York | State Article 39-DD & DDD, § 898 | All firearms sales in the state including private party and gun show transactions are subject to a check via NICS. |
| Oregon | State Statute § 166.410 | All private sales of firearms must be conducted through a federally licensed firearms dealer (FFL), who is required to conduct a background check (2015 law). A private seller at a gun show must either go through a licensed dealer or obtain approval from the Department of State Police. |
| Pennsylvania | 18 PA Statute § 6111 | Private sales of handguns or short-barreled rifles/shotguns may only be conducted in the county sheriff's office or the place of business of a licensed importer, dealer, or manufacturer. No background check requirement for private sales of rifles or shotguns. |
| Rhode Island | State Statute § 11-47-35 | All transfers of firearms require background checks. |
| Washington | State Code § 9.41.010 | All private firearms transfers must be done through a federally licensed firearms dealer, which requires a background check. The sale is placed on hold until the buyer is cleared or ten (10) business days have passed. |