

## **BILL ANALYSIS**

Senate Research Center

S.B. 1669  
By: Patterson  
Criminal Justice  
4-6-97  
As Filed

### **DIGEST**

Currently, federal law requires a five-day waiting period or an instant criminal background check before a person may purchase a handgun. The county sheriffs are responsible for performing the instant background check. This bill would authorize the Texas Department of Public Safety to establish a statewide instant background check system in regard to the purchase of firearms.

### **PURPOSE**

As proposed, S.B. 1669 authorizes the Texas Department of Public Safety to establish a statewide instant background check system in regard to the purchase of firearms.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Public Safety in SECTIONS 6 and 7(F) and (G).

### **SECTION BY SECTION ANALYSIS**

SECTION 1. LEGISLATIVE INTENT. Sets forth legislative intent in regard to the creation of an orderly system to determine whether or not individuals who seek to purchase firearms in this state are person convicted of felony offenses.

SECTION 2. FUGITIVE FROM JUSTICE. Prohibits a person who is determined to be a fugitive from justice from being issued an approval number. Defines "fugitive from justice." Requires the Department of Public Safety (DPS), where a warrant of arrest is found to be outstanding, to confirm the existence of such warrant and to notify the licensee within the next working day. Provides that licensees are directed to cooperate with the law enforcement agencies throughout this state in securing the arrest of individuals who are fugitives from justice who present themselves at a licensee's premises for the purpose of acquiring firearms. Provides that nothing in this Act shall preclude an individual otherwise entitled to purchase a firearm from purchasing a firearm.

SECTION 3. DEFINITIONS. Defines "firearm," "transfer," "licensee," "on the premises," "working day," "department," "holidays," and "section."

SECTION 4. PROCESS. Requires a licensee to perform certain functions in each situation in which a citizen of this state or a non-resident of this state wishes to acquire a firearm in this state.

SECTION 5. RESPONSES. Sets forth certain responses the Firearm Transfer Section (section) of the Crime Records Service of the DPS will make to a licensee's request for the issuance of an approval number.

SECTION 6. FORMS. Requires licensees to purchase from the DPS appropriate forms in which the DPS is empowered to design and sell for purposes of securing the aforementioned record checks. Sets forth the guidelines relating to the forms.

SECTION 7. RECORDS. Provides that the records regarding the activities under this Act conducted by DPS are not subject to release under the Open Records Act. Authorizes DPS to retain such records as are necessary to satisfy all federal requirements regarding access to the National Crime Information Centers systems and such other records as may be deemed necessary and

appropriate by DPS to comply with all necessary state and federal laws. Requires licensees to retain records of all transactions conducted under this Act. Requires no information to be retained by DPS which will enable an individual to identify a particular person as the purchaser of a firearm. Provides that DPS is not required to take any action other than to make a complete examination of the computerized record that is assigned to the named individual. Authorizes DPS to adopt all rules necessary for the implementation of the provisions of this Act. Authorizes DPS, by rule, to set a fee sufficient to recover the actual cost of the administration of this Act.

SECTION 8. COST. Requires all funds received under this Act to be transmitted by DPS to the Comptroller of Public Accounts for deposit in the general revenue fund credited to an account to be known as the Firearms Criminal Records Transfer Account (account). Authorizes funds deposited in the account to be appropriated by the legislature only for the purposes of administering the provisions of this Act.

SECTION 9. INDEMNITY. Prohibits each and every action taken by a member of DPS from giving rise to a cause of action in damages or from serving as a basis for a claim or any other attempt to recover money damages. Sets forth immunity for DPS, its employees, and all licensees.

SECTION 10. COMPUTER FAILURE. Requires DPS, at the earliest opportunity, but no later than one working day after the restoration of computer service, to respond to an inquiry made when the computer systems of DPS were not operational.

SECTION 11. REMEDIES ON NON-APPROVAL. Sets forth the remedies for an individual who is not approved for purchase of a firearm.

SECTION 12. DEPARTMENT HOURS OF OPERATION. Sets forth the operational hours of the toll-free number established under this Act by DPS.

SECTION 13. SURRENDER OF FORMS. Sets forth the guidelines for the surrender and cancellation of forms purchased by an individual licensee in the event that individual is no longer licensed under the Federal Firearms Act to transfer firearms.

SECTION 14. REFERRAL OF VIOLATIONS. Requires all violations of the provisions of this Act to be referred to the appropriate law enforcement agency.

SECTION 15. OFFENSES. Sets forth the various offenses and punishments for certain acts that do not comply with the provisions or any rules promulgated under this Act.

SECTION 16. EXCEPTION TO APPLICATION OF APTRA. Provides that the provisions of the Administrative Procedures and Texas Register Act do not apply to a review of non-approval under this Act.

SECTION 17. IDENTIFICATION REQUIRED. Requires an individual to produce certain identification in order to secure the transfer of a firearm in the State of Texas.

SECTION 18. COST RECOVERY BY LICENSEE. Entitles a licensee to recover the cost of the form purchased from DPS to comply with the provisions of this Act. Authorize a licensee to add a certain administrative fee. Entitles a licensee to recover the sum of money that includes both the fee paid to DPS by the licensee and the administrative cost. Provides that the fees are non-refundable.

SECTION 19. NOTIFICATION OF FEDERAL AUTHORITIES. Requires DPS to notify the appropriate federal authorities of any licensee who violates any provision of this Act.

SECTION 20. ERRORS IN REPORTED INFORMATION. Provides that DPS is not liable or responsible for any errors, inaccuracies or omissions in the information which has been submitted to it by reporting agencies.

SECTION 21. REPORTING. Sets forth the guidelines relating to certain agencies directed to report criminal history record information to DPS.

SECTION 22. NO RIGHTS ESTABLISHED. Provides that nothing contained in this Act shall create a right, privilege, immunity or entitlement that an individual does not already have. Provides that the approval of the acquisition of a firearm under this Act does not convey any other right, privilege or immunity, neither does it entitle any individual to any greater rights than they would have had without obtaining said approval. Provides that the failure of DPS to issue an approval for an individual to acquire a firearm does not mean anything other than non-approval.

SECTION 23. INSPECTION AUTHORITY. Sets forth the guidelines for the inspection of licensed federal firearms dealers and individual licensees by DPS and any commissioned peace officer of the State of Texas, respectively.

SECTION 24. REVOCATION OF CONTROL NUMBERS. Sets forth the certain conditions in which a licensee's control numbers shall be revoked. Prohibits a licensee whose control number has been revoked from securing approval for the sale of firearms under this Act. Requires such a licensee to surrender all unused forms to DPS upon revocation.

SECTION 25. APPEAL OF REVOCATION. Requires an individual licensee whose control number has been revoked to be entitled to appeal under the provisions of the Administrative Procedures and Texas Register Act, Article 6252-13a, V.T.C.S.

SECTION 26. ADMINISTRATIVE SUBPOENA. Authorizes the director of DPS or the director's designee to issue an administrative subpoena to a licensee to compel the production of certain information from the licensee's records.

SECTION 27. INFORMATION AVAILABLE TO PEACE OFFICERS. Entitles any peace officer of the State of Texas to request from DPS information retained by it under the provisions of this Act for legitimate law enforcement purposes. Provides that legitimate law enforcement purposes include, but are not limited to, the investigation of criminal activity.

SECTION 28. AMMUNITION. Provides that nothing in this Act regulates the sale of ammunition.

SECTION 29. APPLICABILITY. Makes application of this Act prospective.

SECTION 30. Emergency clause.  
Effective date: 90 days after adjournment.