

HOUSE BILL No. 1739

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-3-12.5; IC 35-47-2.5.

Synopsis: Sale of handguns. Removes references concerning the federal national instant criminal background check system (NICS) from the law concerning the sale of handguns. Returns the law concerning the sale of handguns to the form it was in before changes concerning the NICS were made to that law during the 2006 session of the general assembly. Specifies that the form that a person purchasing a handgun must submit to a firearms dealer concerning consent to obtain the person's criminal history information may not include any information related to the handgun.

Effective: July 1, 2007.

Pelath, Denbo

January 26, 2007, read first time and referred to Committee on Public Policy.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1739



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-12.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 12.5. (a) Upon receipt of a complaint that records of
4 handgun purchases are not being timely destroyed as required by
5 IC 35-47-2.5-8.5, the attorney general shall conduct a compliance
6 inspection to substantiate compliance.**

7 **(b) The attorney general shall report the findings of inspections
8 made under this section to the governor and to the presiding officer
9 of each house of the general assembly.**

10 SECTION 2. IC 35-47-2.5-1, AS AMENDED BY P.L.190-2006,
11 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2007]: Sec. 1. (~~a~~) This chapter does not apply to the following:

13 (1) Transactions between persons who are licensed as firearms
14 importers or collectors or firearms manufacturers or dealers under
15 18 U.S.C. 923.

16 (2) Purchases by or sales to a law enforcement officer or agent of
17 the United States, the state, or a county or local government.



1 (3) Indiana residents licensed to carry handguns under
2 IC 35-47-2-3.

3 (b) Notwithstanding any other provision of this chapter, the state
4 shall participate in the NICS if federal funds are available to assist the
5 state in participating in the NICS: If:

- 6 (1) the state participates in the NICS; and
 - 7 (2) there is a conflict between:
 - 8 (A) a provision of this chapter; and
 - 9 (B) a procedure required under the NICS;
- 10 the procedure required under the NICS prevails over the conflicting
11 provision of this chapter.

12 SECTION 3. IC 35-47-2.5-3, AS AMENDED BY P.L.190-2006,
13 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2007]: Sec. 3. (a) **Notwithstanding any other law**, a person
15 purchasing a handgun from a dealer shall complete and sign Bureau of
16 Alcohol, Tobacco, Firearms and Explosives Form 4473:

17 (b) The dealer shall forward a copy of the Form 4473 signed by the
18 purchaser to the state police department before the last day of the
19 month following the sale: **consent in writing, on a form to be
20 provided by the superintendent, to have the dealer obtain criminal
21 history information. The form may not include any information
22 related to the handgun.**

23 SECTION 4. IC 35-47-2.5-4, AS AMENDED BY P.L.190-2006,
24 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2007]: Sec. 4. (a) A dealer may not sell, rent, trade, or transfer
26 from the dealer's inventory a handgun to a person until the dealer has
27 done all of the following:

- 28 (1) Obtained from the prospective purchaser a **completed and
29 signed Form 4473 written consent to a criminal history check**
30 as specified in section 3 of this chapter.
- 31 (2) ~~Contacted NICS:~~
 - 32 (A) by telephone; or
 - 33 (B) electronically;
- 34 to request a background check on the prospective purchaser.
- 35 (3) Received authorization from NICS to transfer the handgun to
36 the prospective purchaser.
- 37 (b) The dealer shall record the NICS transaction number on Form
38 4473 and retain Form 4473 for auditing purposes:

39 (2) **Provided the state police department with the prospective
40 purchaser's name, birth date, gender, race, Social Security
41 number, and any other identification required of the
42 prospective purchaser.**

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1 **(3) Requested and received criminal history information from**
2 **the state police department by means of:**

- 3 **(A) a telephone call; or**
- 4 **(B) other electronic means.**

5 SECTION 5. IC 35-47-2.5-6.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. Upon receipt of a request for**
8 **a criminal history check under this chapter, the state police**
9 **department shall:**

- 10 **(1) review its criminal history information to determine**
11 **whether the buyer or transferee is prohibited from possessing**
12 **or transporting a firearm by state or federal law;**
- 13 **(2) inform the dealer if the state police department's record**
14 **indicates that the buyer or transferee is a prohibited buyer or**
15 **transferee; and**
- 16 **(3) provide the dealer with a unique reference number for the**
17 **inquiry.**

18 SECTION 6. IC 35-47-2.5-7.5 IS ADDED TO THE INDIANA
19 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2007]: **Sec. 7.5. (a) The state police**
21 **department shall provide its response to a requesting dealer under**
22 **section 6.5 of this chapter during the dealer's call or by return call**
23 **without delay.**

24 **(b) If a criminal history check indicates that a prospective**
25 **purchaser or transferee has a disqualifying criminal record or has**
26 **been acquitted by reason of insanity and committed to the custody**
27 **of the division of mental health and addiction, the state police**
28 **department has until the end of the next business day of the state**
29 **police department to advise the dealer that the records indicate the**
30 **buyer or transferee is prohibited from possessing or transporting**
31 **a firearm by state or federal law.**

- 32 **(c) If a dealer:**
 - 33 **(1) is not advised of a prohibition before the end of the next**
34 **business day of the state police department; and**
 - 35 **(2) has fulfilled the requirements of section 4 of this chapter;**
- 36 **the dealer may immediately complete the sale or transfer and may**
37 **not be considered in violation of this chapter with respect to the**
38 **sale or transfer.**

39 **(d) In case of electronic failure or other circumstances beyond**
40 **the control of the state police department, the dealer shall be**
41 **advised immediately of the reason for the delay and be given an**
42 **estimate of the length of the delay. However, after a notification**

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1 under this subsection, the state police department shall inform the
2 requesting dealer whether state police department records indicate
3 the buyer or transferee is prohibited from possessing or
4 transporting a firearm by state or federal law:

5 (1) by the end of the next business day of the state police
6 department following correction of the problem that caused
7 the delay; or

8 (2) within three (3) business days of the state police
9 department;

10 whichever time limit occurs earlier.

11 (e) If a dealer fulfills the requirements of section 4 of this
12 chapter and is told by the state police department, in the estimate
13 of the length of the delay given under subsection (d), that a
14 response will not be available within the time limit set forth in
15 subsection (d), the dealer may immediately complete the sale or
16 transfer and may not be considered in violation of this chapter with
17 respect to the sale or transfer.

18 SECTION 7. IC 35-47-2.5-8.5 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2007]: Sec. 8.5. (a) Except as otherwise
21 provided in this section, the state police department may not
22 maintain records in any form, including a computer data base,
23 longer than thirty (30) days after a dealer's request for a criminal
24 history check concerning a buyer or transferee who is not found to
25 be prohibited from possessing and transporting a firearm under
26 state or federal law.

27 (b) A log of requests made to the state police department may be
28 maintained for not more than twelve (12) months if the log consists
29 only of:

- 30 (1) the name of the purchaser;
- 31 (2) the dealer identification number;
- 32 (3) the unique approval number;
- 33 (4) the transaction date; and
- 34 (5) a record indicating that the fee collected by the dealer
35 under section 11.5 of this chapter has been transferred to the
36 state police department.

37 SECTION 8. IC 35-47-2.5-9.5 IS ADDED TO THE INDIANA
38 CODE AS A NEW SECTION TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2007]: Sec. 9.5. If a buyer or transferee is
40 denied the right to purchase a handgun under this chapter, the
41 buyer or transferee may exercise the right of access to and review
42 and correction of criminal history information under

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IC 10-13-3-31.

SECTION 9. IC 35-47-2.5-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 10.5. A person who knowingly or intentionally:**

- (1) requests, obtains, or seeks to obtain under false pretenses;**
- (2) wrongfully maintains; or**
- (3) disseminates or seeks to disseminate;**

criminal history information except as authorized in this chapter commits a Class A misdemeanor.

SECTION 10. IC 35-47-2.5-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 11.5. (a) All licensed firearms dealers shall collect a fee of three dollars (\$3) for every transaction for which a criminal history check is required under this chapter. The fee must be transferred to the state police department before the last day of the month following the sale.**

(b) The state police department shall deposit the fees received under this section in a special fund for use in offsetting the cost of conducting criminal history checks under this chapter.

SECTION 11. IC 35-47-2.5-12, AS AMENDED BY P.L.190-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. A person who knowingly or intentionally makes a materially false statement on Form 4473 completed and forwarded under the consent form required by section 3 of this chapter commits a Class D felony.**

SECTION 12. IC 35-47-2.5-2.5 IS REPEALED [EFFECTIVE JULY 1, 2007].

SECTION 13. [EFFECTIVE JULY 1, 2007] **IC 35-47-2.5-10.5, as added by this act, and IC 35-47-2.5-12, as amended by this act, apply only to crimes committed after June 30, 2007.**

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