



Legislative Fiscal Bureau

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May 26, 2009

Joint Committee on Finance

Paper #517

Increase Handgun Purchaser Record Check Fee (Justice)

[LFB 2009-11 Budget Summary: Page 35, #11, Page 430, #7, and Page 431, #8]

CURRENT LAW

When a firearms dealer sells a handgun, the dealer may not transfer possession of that handgun until: (a) the dealer has inspected photographic identification from the purchaser; (b) the purchaser has completed a notification form with the purchaser's name, date of birth, gender, race and social security number so that the Department of Justice (DOJ) may perform an accurate record search; (c) the dealer has submitted the information to DOJ and has requested a firearms restrictions record search; and (d) 48 hours have lapsed (subject to certain extensions) and DOJ has not notified the dealer that the transfer would be a violation of state or federal law. An \$8 fee is assessed on the dealer (who may pass the charge on to the purchaser) for each background check. The fee revenues are remitted to DOJ and are intended to fund the cost of operating the record check program (the "handgun hotline"). The handgun hotline's 2008-09 budget is \$466,900 PR and 8.0 PR positions.

GOVERNOR

Handgun Purchaser Record Check Fee Increase. Increase the handgun purchaser record check fee from \$8 to \$30.

Deposit Handgun Purchaser Record Check Fees to the Penalty Surcharge Fund. Eliminate the direct deposit of handgun purchaser record check fees into DOJ's handgun purchaser record check appropriation to support the operation of the handgun hotline. Instead, rename DOJ's "penalty surcharge receipts" appropriation the "criminal justice program support" appropriation, and provide that, in addition to penalty surcharge receipts, handgun purchaser record check fees would also be deposited to this appropriation to fund penalty surcharge funded

programs under five state agencies, as well as the handgun hotline. (Under current law, only penalty surcharge revenue is deposited to this appropriation.) Require that all unencumbered balances at the end of each fiscal year (in appropriations funded by penalty surcharge receipts and handgun purchaser record check fees) revert to the "criminal justice program support" appropriation under DOJ.

Under AB 75, the language requiring that all unencumbered balances at the end of each fiscal year revert to the "criminal justice program support" appropriation was inadvertently not included in the "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation. If the Committee adopts this reversion requirement, reversion language would be added to this appropriation.

Across-the-Board 1% Funding Reduction. Reduce funding by \$4,900 PR annually to the handgun hotline as part of an across-the-board 1% reduction to most non-federal appropriations.

DISCUSSION POINTS

1. Under current federal law, states may individually determine whether they will process background checks on purchasers prior to the transfer of handguns and long guns. States processing these background checks must ensure that the guns are not transferred in violation of federal or state law. If a state does not process background checks, either in whole or in part, the FBI processes those background checks not undertaken by the state.

2. In Wisconsin, staff in DOJ's Crime Information Bureau processes background checks on handgun purchasers. The FBI continues to be responsible for background checks on long gun purchasers in Wisconsin. States which process background checks are also authorized to extend their background checks beyond the requirements under federal law. Currently, Wisconsin handgun background checks include a review of such matters as adjudications of mental illness, certain juvenile convictions and certain domestic abuse, child abuse, and harassment injunctions that are not reviewed as part of a federal background check.

3. Under s. 175.35 of the statutes, when a firearms dealer sells a handgun in Wisconsin, the dealer may not transfer possession of that handgun until all of the following events occur: (a) the dealer has inspected photographic identification from the purchaser; (b) the purchaser has completed a notification form with the purchaser's name, date of birth, gender, race and social security number so that DOJ may perform an accurate record search; (c) the dealer has submitted the information to DOJ and has requested a firearms restrictions record search; and (d) 48 hours have lapsed (subject to certain extensions) and DOJ has not notified the dealer that the transfer would be a violation of state or federal law.

4. An \$8 fee is assessed on the dealer (who may pass the charge on to the purchaser) for each background check. These fee revenues are remitted to DOJ and are intended to fund the cost of operating the record check program.

5. The Bureau operates a handgun hotline between the hours of 9:00 a.m. and 9:00 p.m. on weekdays, and between the hours of 9:00 a.m. and 5:00 p.m. on weekends, so as to be available to receive telephone calls during regular retail hours. The handgun hotline receives telephone inquiries from handgun dealers. The information provided by the dealers during the course of these calls enables Bureau staff to begin the required background checks on handgun purchases.

6. As a part of the background check approval process, handgun dealers must submit a written notification form to the Bureau. If the information on the written notification forms confirms the information that was provided to the Bureau during the initial telephone call, the background check can normally be completed, based on information that was provided in the initial telephone contact to the Bureau. If the data on the written notification forms contains new information, additional limited or more involved follow-up review may be required before the purchase can be approved. Where an initial telephone inquiry or a subsequent follow-up review discloses a disqualification that would bar handgun ownership, the purchase request is denied.

7. The handgun hotline received 41,414 calls from dealers in 2007-08. Table 1 indicates the disposition of these background checks.

TABLE 1

Handgun Hotline Background Checks

| | <u>Calls</u> |
|------------------------------|--------------|
| Instant Approvals | 18,588 |
| Limited Follow-up Approvals | 20,831 |
| Involved Follow-up Approvals | 1,424 |
| Denials | <u>571</u> |
| Total | 41,414 |

8. Since its creation under 1991 Wisconsin Act 11, the program has ended each state fiscal year in deficit. During 2007-08, the program received \$333,900 PR in record check fees but expended \$430,500 PR. At the end of the 2007-08 fiscal year, the program's cumulative deficit stood at \$1,044,400 PR and is projected to end 2008-09 with a deficit of \$1,168,100 PR.

9. Table 2 reflects the fund condition for the handgun purchaser record check program if current law were to be maintained through 2009-11. If current law were to be maintained, the deficit in the program is projected to increase from \$1,168,100 PR at the beginning of 2009-10, to \$1,508,800 PR at the end of 2010-11. [Alternative 3]

TABLE 2

Handgun Hotline Fund Condition Under Current Law

| <u>Item</u> | <u>2009-10</u> | <u>2010-11</u> |
|--------------------------|----------------|----------------|
| Opening Balance | -\$1,168,100 | -\$1,329,600 |
| Revenue | 331,200 | 331,200 |
| Expenditures | 471,700 | 471,700 |
| Supplements and Reserves | 21,000 | 38,700 |
| Closing Balance | -\$1,329,600 | -\$1,508,800 |

10. Under AB 75, the administration recommends: (a) increasing the handgun purchaser record check fee from \$8 to \$30; (b) eliminating the direct deposit of handgun purchaser record check fees into the DOJ handgun purchaser record check fees appropriation to support the operation of the handgun hotline; (c) renaming DOJ's "penalty surcharge receipts" appropriation the "criminal justice program support" appropriation, and provide that, in addition to penalty surcharge receipts, handgun purchaser record check fees would also be deposited to this appropriation to fund penalty surcharge funded programs under five state agencies, as well as the handgun hotline; (d) requiring that all unencumbered balances at the end of each fiscal year (in appropriations funded by the penalty surcharge and handgun purchaser record check fees) revert to the "criminal justice program support" appropriation under DOJ; and (e) reducing funding by \$4,900 PR annually to the handgun hotline as part of an across-the-board 1% reduction to most non-federal appropriations.

11. Based upon an updated review of record check experience during the current biennium, it is estimated that a \$30 handgun purchaser record check fee would generate additional annual revenue of \$910,800 PR. Under AB 75, it was estimated that this fee increase would generate additional annual revenue of \$836,100 PR.

12. Since its creation under 1991 Wisconsin Act 11, revenues from the \$8 handgun purchaser record check fee have been utilized exclusively to offset the costs of performing the required background checks by DOJ. Under AB 75, the fee would be increased from \$8 to \$30, and the increased fee revenue would be utilized to reduce the existing deficit under the program, as well as to fund a series of programs that have historically been funded by the penalty surcharge including: (a) alcohol and other drug abuse programs; (b) crime victim and witness services; (c) law enforcement officer training, including correctional officer training; (d) the transaction information for the management of enforcement (TIME) system, which provides law enforcement agencies across the state access to a variety of law enforcement-related databases; (e) drug enforcement intelligence operations at DOJ; (f) grants to local anti-drug task forces; (g) grants for youth diversion programs; and (h) conference and training expenses incurred by the Office of the State Public Defender.

13. In addition, under AB 75, these funds would also be utilized for grants to counties for treatment, alternatives, and diversion programs. These programs provide alternatives to prosecution and incarceration for criminal offenders who abuse alcohol or other drugs.

14. Of the 41,414 background checks completed in 2007-08, 571 were denied the right to purchase a handgun (approximately 1.4% of all completed background checks). Some might argue that it is inappropriate to require citizens purchasing handguns to pay for a wide range of criminal justice-related programming, when they are lawfully purchasing a handgun that they are legally permitted to possess. It could be argued that charging such individuals a fee to cover the costs of administering the background check program is acceptable, but charging purchasers a fee in excess of this amount to support criminal justice-related programming is inappropriate. While it costs an estimated \$13 to complete a background check, under AB 75 every individual seeking to purchase a handgun would now be required to pay a \$30 handgun purchaser record check fee.

15. If the Committee agrees, it could delete the creation of a criminal justice program support fund under AB 75 and return to current law by providing that handgun purchaser record check fees may only be utilized to offset the costs of performing the background checks.

16. On the other hand, it could be argued that the background check system was created, in part, to ensure that individuals with disqualifying criminal histories do not possess handguns. As a result, it could be argued that this program has a criminal justice-related purpose like many penalty surcharge funded programs and that it is appropriate to combine the revenue sources. If the Committee agrees with this latter position, it could adopt the creation of the criminal justice program support fund under AB 75.

17. Table 3 reflects the fund condition for the recommended criminal justice program support fund under AB 75.

TABLE 3**Criminal Justice Program Support Fund Under AB 75**

| <u>Appropriation</u> | <u>2009-10</u> | <u>2010-11</u> |
|--|------------------|------------------|
| Combined Opening Balance | -\$3,912,900 | -\$4,021,100 |
| Penalty Surcharge Revenue | 18,667,200 | 18,667,200 |
| Handgun Hotline Revenue | <u>1,242,000</u> | <u>1,242,000</u> |
| Revenue Total | \$15,996,300 | \$15,888,100 |
| DPI--Aid for alcohol and other drug abuse programs | \$1,427,500 | \$1,427,500 |
| DPI--Alcohol and other drug abuse program | 683,600 | 673,600 |
| Corrections--Victim services and programs | 274,800 | 274,800 |
| Corrections--Correctional officer training | 2,232,500 | 2,237,600 |
| DOJ--Law enforcement training fund, local assistance | 4,849,800 | 4,849,800 |
| DOJ--Law enforcement training fund, state operations | 3,553,500 | 3,553,500 |
| DOJ--Crime laboratory equipment and supplies | 342,300 | 342,300 |
| DOJ--Transaction information management of enforcement system | 860,000 | 860,000 |
| DOJ--Drug enforcement intelligence operations | 1,697,700 | 1,697,700 |
| DOJ--Drug crimes enforcement; local grants | 797,700 | 797,700 |
| DOJ--Reimbursement to counties for victim-witness services | 832,100 | 832,100 |
| DOA--Law enforcement programs and youth diversion-administration | 207,300 | 207,300 |
| DOA--Youth diversion program | 747,100 | 747,100 |
| DOA--Treatment, alternatives, and diversion program | 705,000 | 705,000 |
| DOA--Grants for digital recording of custodial interrogations | 0 | 0 |
| SPD--Conferences and training | 145,800 | 145,800 |
| DOJ--Handgun Hotline | <u>467,000</u> | <u>467,000</u> |
| Total Expenditures | \$19,823,700 | \$19,818,800 |
| Supplements and Reserves | \$193,700 | \$367,900 |
| Closing Balance | -\$4,021,100 | -\$4,298,600 |

18. Under state law, program revenue accounts may not operate in deficit. Under s. 16.40(7) of the statutes, DOA is required to collect from any available source and correlate information concerning any and all anticipated state revenues, including program revenues. Under s. 16.513 of the statutes, if DOA projects that there are insufficient moneys, assets, or accounts receivable to cover expenditures under a program revenue appropriation(s), the affected agencies must propose and submit to DOA a plan to assure that there are sufficient moneys, assets, or accounts receivable to meet projected expenditures under the appropriation(s). Any such plan approved by DOA must be forwarded to the Joint Committee on Finance for its approval under 14-day passive review.

19. Creation of a criminal justice program support fund combining penalty surcharge and handgun purchaser record check fee revenues would eliminate the deficit in the funds by the end of 2009-11. The combined fund would begin the 2009-11 biennium with a deficit of

\$3,912,900 PR and would end the biennium with a deficit of \$4,298,600 PR. [Alternative 1]

20. The Committee could consider: (a) deleting the creation of a criminal justice program support fund (including the annual reversion of balances to the "criminal justice program support" appropriation; (b) maintaining current law and providing for the direct deposit of handgun purchaser record check fees into DOJ's handgun purchaser record check appropriation to support the operation of the handgun hotline; and (c) increasing the handgun purchaser record check fee from \$8 to \$27 (instead of \$30 under AB 75) in order to eliminate the deficit under the handgun hotline program. Under this alternative, DOJ, DOA, and the Legislature could revisit the amount of the fee during 2011-13 budget deliberations and set the fee at an amount necessary to cover the costs of completing the required background checks. Table 4 reflects the fund condition for the handgun hotline program during 2009-11 if the handgun purchaser record check fee were increased to \$27. [Alternative 2]

TABLE 4

Handgun Hotline Fund Condition if Record Check Fee Increased to \$27

| <u>Item</u> | <u>2009-10</u> | <u>2010-11</u> |
|--------------------------|----------------|----------------|
| Opening Balance | -\$1,168,100 | -\$538,300 |
| Base Revenue | \$331,200 | \$331,200 |
| Fee Increase | <u>786,600</u> | <u>786,600</u> |
| Total Revenue | \$1,117,800 | \$1,117,800 |
| Expenditures | \$467,000 | \$467,000 |
| Supplements and Reserves | 21,000 | 38,700 |
| Closing Balance | -\$538,300 | \$73,800 |

ALTERNATIVES

1. Approve the Governor's recommendation to: (a) increase the handgun purchaser record check fee from \$8 to \$30; (b) eliminate the direct deposit of handgun purchaser record check fees into the Department of Justice's (DOJ) handgun purchaser record check fees appropriation to support the operation of the handgun purchaser record check program; (c) rename DOJ's "penalty surcharge receipts" appropriation the "criminal justice program support" appropriation, and provide that, in addition to penalty surcharge receipts, handgun purchaser record check fees would also be deposited to this appropriation to fund penalty surcharge funded programs under five state agencies, as well as the handgun purchaser record check program; (d) require that all unencumbered balances at the end of each fiscal year (in appropriations funded by penalty surcharge and handgun purchaser record check fees) revert to the "criminal justice program support" appropriation under DOJ; and (e) reduce funding by \$4,900 PR annually to the handgun purchaser record check program as part of an

across-the-board 1% reduction to most non-federal appropriations. Require that all unencumbered balances at the end of each fiscal year in the "alternatives to prosecution and incarceration for persons who use alcohol or other drugs; penalty surcharge" appropriation also revert to the "criminal justice program support" appropriation under DOJ. Estimate increased revenues from a \$30 handgun purchaser record check fee at \$910,800 PR annually. (Under AB 75, it was estimated that increasing the fee to \$30 would generate additional revenue of \$836,100 PR annually.)

| ALT 1 | Change to Bill |
|--------------|-----------------------|
| | Revenue |
| PR | \$149,400 |

2. Delete the creation of a criminal justice program support fund. In addition: (a) increase the handgun purchaser record check fee from \$8 to \$27 (instead of \$30 under AB 75) to eliminate the deficit in the handgun hotline fund; and (b) reduce funding by \$4,900 PR annually to the handgun hotline as part of an across-the-board 1% reduction to most non-federal appropriations. Estimate increased revenue from a \$27 handgun purchaser record check fee at \$786,600 PR annually.

| ALT 2 | Change to Bill |
|--------------|-----------------------|
| | Revenue |
| PR | - \$99,000 |

3. Delete provisions.

| ALT 3 | Change to Bill | |
|--------------|-----------------------|---------|
| | Revenue | Funding |
| PR | - \$1,672,200 | \$9,800 |

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