

My Helpful Suggestions for SB 700-14

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So-called “universal” background checks for private party firearm sales will be difficult to enforce. The state can’t have officers in every private home, place of business, and parking lot (all places where I have personally purchased firearms) to make sure background checks are being performed. There is no other way for the state to know that a used firearm has been sold privately without national “universal” firearm registration, which is anathema to most firearm owners, because while registration does nothing to prevent crime, it does greatly facilitate confiscation. The people we most want to take (and fail) background checks – criminals and gang members – will simply ignore the “universal” background check law when selling to each other, and there is little the state can do to detect and punish such sales. That’s why “universal” background checks will never be universal. Even worse, otherwise completely law-abiding citizens will become law-breakers for failing to comply with a law that many feel is unnecessary and burdensome.

We all want “to keep guns out of the wrong hands”, but mandating so-called “universal” background checks is a heavy-handed approach. For example, consider two Army buddies who have known each other since Vietnam. They saved each other’s lives during the war, and they are the godfathers of each other’s children. They are now successful pillars of their community. But if one of them sells a .22 rifle or a shotgun to his best friend without a background check, they would become law-breakers under SB 700. How would arresting and charging them make our state safer?

Here is a real life example. I am a physician licensed by the State of Oregon and a Federally-licensed firearm collector. My next-door neighbor is a police officer with the Cornelius Police Department. If SB 700 becomes law, the state would want me to perform a background check on my neighbor – a police officer – if I sold him a firearm. Likewise, he would be required to perform a background check on me - a licensed physician and licensed firearm collector - if he sold me a firearm. Are my neighbor - a police officer - and I the “wrong hands” the state is trying to prevent from obtaining firearms? Is requiring me to perform a background check on a police officer “reasonable” or “sensible”? Meanwhile, criminals and gang members will continue to sell firearms to each other without background checks, just as they always have.

While most Oregon gun owners in a recent poll expressed support for the idea of “universal” background checks (because most gun owners would never be affected by and therefore inconvenienced by the law), achieving wide compliance with the law will be dubious, and the law will be difficult to enforce. Therefore, I would like to offer two

suggestions that would increase the levels of voluntary compliance with the law, among other benefits.

These suggestions would:

- 1. Increase compliance with the law by removing a disincentive and creating an incentive to perform background checks for private sales.**
- 2. Eliminate the increased risk of credit card fraud that would accompany passage of the law.**
- 3. Reduce the workload of the already overburdened Oregon State Police who perform firearm background checks by eliminating unnecessary and redundant background checks.**

My first suggestion is:

- Eliminate the \$10 fee for private sale background checks, including those performed at gun shows.**

If someone is selling a used firearm for \$100, the background check represents a 10% transfer fee. Eliminating the fee would remove a disincentive to performing the background check. It would streamline and simplify the process. I think it is fantastic that Oregon provides a toll-free number to ordinary citizens so they can perform background checks without having to involve a licensed dealer, because many licensed dealers don't want to be bothered with performing a service that is time consuming, earns them little, and helps the competition

(private sellers). Eliminating the fee would remove another barrier to participation.

Many advocates of “universal” background checks cite the high levels of support in polls for “universal” background checks – 90% in national polls and 81% in a poll of Oregonians. If it is true that almost everyone supports “universal” background checks, *then everyone should be willing to pay for them through the General Fund.*

I have seen even the staunchest supporters of gun rights – some would call them “gun nuts” – say that if background checks were **free** and did not create de facto registration, they would not have a problem with them.

Create an incentive to encourage people to comply with the law

The state could go beyond merely removing a disincentive to perform background checks by eliminating the \$10 fee. It could create an incentive for compliance by rewarding those who complete private sale background checks. The state could award a \$1 income tax credit to both the buyer and seller who complete a private firearm sale background check, up to a maximum tax credit of \$20 per person per year. It would cost the state revenue perhaps in the thousands or tens of thousands of dollars, which is insignificant in a multi-billion dollar annual budget. It would send a powerful and positive message to skeptical gun owners that the state wants to reward law-abiding gun owners for good behavior, rather than only piling on more regulations that threaten fines and imprisonment.

Eliminating the risk of credit card fraud

The second benefit of eliminating the \$10 fee is eliminating the risk of credit card fraud that could occur. The only way to pay the \$10 fee is for the buyer's credit card information to be read out loud by the seller (whom the buyer doesn't know anything about) over the phone while conducting the background check. In a noisy public place like a gun show the seller has to speak loudly and clearly while reciting the credit card information and he can be easily overheard by anyone within earshot. Eliminating the \$10 fee eliminates the need for the buyer's credit card information to be publicly disclosed in such an insecure manner.

My second suggestion is:

- **Exempt Oregon residents who have a valid Oregon Concealed Handgun License (CHL) or Federal Firearm License (FFL) from private firearm sale background checks, including private sales at gun shows.**
- **Exempt Oregon resident CHL holders (only) from all firearm sale background checks, including sales performed by licensed dealers.**

If the point of “universal” background checks is to “keep guns out of the wrong hands” then nothing is gained by making someone who has already passed a background check - as evidenced by their Oregon Concealed Handgun License (CHL) or Federal Firearm License (FFL) – and who has therefore proved they are a “good person” go through yet another and another and another background check every time they buy a firearm, whether from a licensed dealer or from a private individual. It serves no purpose and it only increases the workload of the already overburdened Oregon State Police who must process the background checks.

The Federal Brady Law recognizes the logic of this point by specifically allowing states to exempt holders of state firearm licenses such as concealed carry licenses and pistol permits from the background check requirement.

“State Permit Exception:

As required by the Brady law, the new regulations allow, under certain strict circumstances, for a firearms purchaser with a State-issued permit to qualify for an exemption from the requirement for a NICS check at the time of sale.”

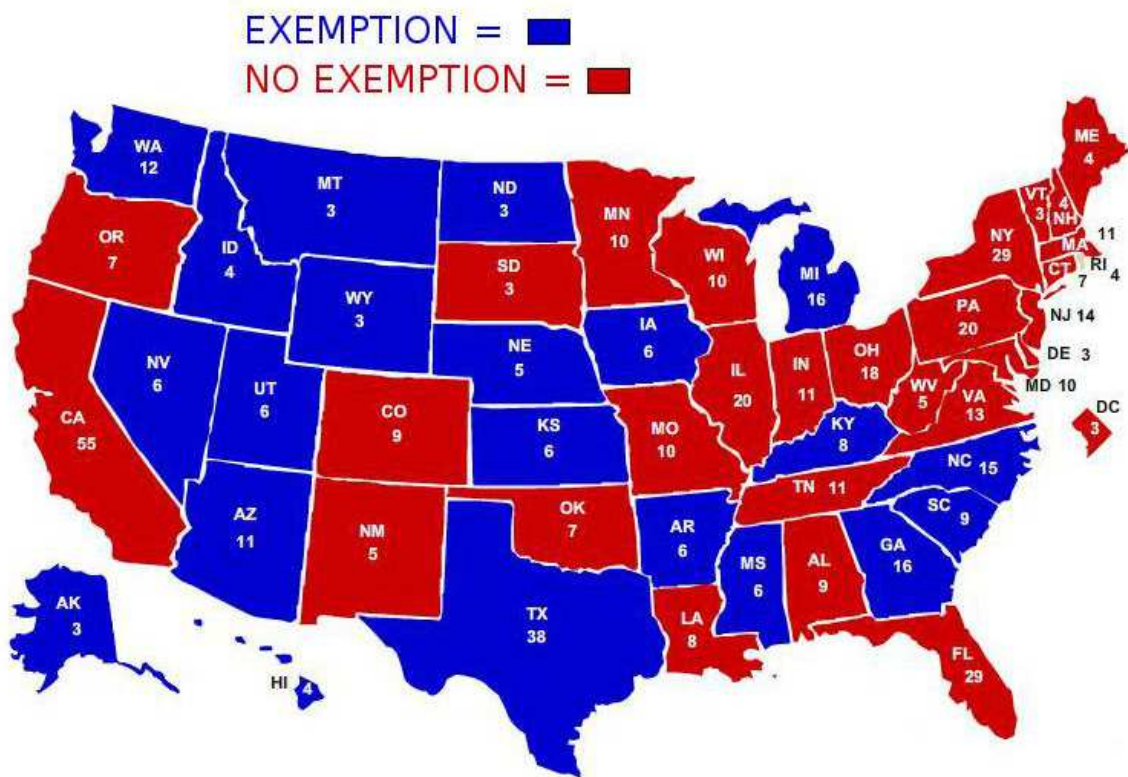
Implementation of the Brady Law, Bureau of Alcohol, Tobacco, and Firearms, September 1999

That is an exemption from **all** firearm background checks, even when purchasing from a licensed dealer.

Many states have taken advantage of that reasonable and sensible provision. <http://www.atf.gov/firearms/brady-law/permit-chart.html>

As a matter of fact, as seen in the map below

STATES THAT EXEMPT HOLDERS OF CONCEALED HANDGUN AND OTHER STATE FIREARM LICENSES FROM BRADY BACKGROUND CHECKS



three of the four states that border Oregon – Washington, Idaho, and Nevada – already exempt state residents with state firearm licenses from background checks. Every state west of the Rockies except Oregon and California, and 15 of the 24 states west of the Mississippi River exempt state license holders from all Brady (NICS) background checks.

The proposed bill that would have created “universal” background checks in the State of Washington included an exemption for concealed pistol license holders.

H-1417.1

SUBSTITUTE HOUSE BILL 1588

State of Washington 63rd Legislature 2013 Regular Session

By House Judiciary (originally sponsored by Representatives Pedersen, Hope, Jenkins, Hansen, Freeman, Kagi, Walsh, Carlyle, Hunter, Clibborn, Ormsby, Cody, Green, Stanford, Orwall, Maxwell, Llias, Pettigrew, Tharinger, Springer, Hudgins, Wylie, Moeller, Fitzgibbon, Ryu, Roberts, Goodman, Riccelli, Farrell, Fey, Appleton, Pollet, Habib, Bergquist, Moscoso, Hunt, Santos, and Reykdal)

READ FIRST TIME 02/22/13.

1 (1) No person may deliver a firearm to any person whom he or she
2 has reasonable cause to believe is ineligible under ((RCW 9.41.040))
3 state or federal law to possess a firearm. Any person violating this
4 ((section)) subsection is guilty of a class C felony, punishable under
5 chapter 9A.20 RCW.

6 (2)(a) No unlicensed person may sell a firearm to another
7 unlicensed person unless: (i) The purchaser has undergone a background
8 check in accordance with the provisions of this subsection (2) and the
9 background check indicates that the purchaser is eligible to possess a
10 firearm under state and federal law; or (ii) the purchaser produces a
11 valid concealed pistol license issued under RCW 9.41.070.

12 (b)(i) A seller of a firearm to a purchaser who does not produce a
13 valid concealed pistol license issued under RCW 9.41.070 shall request
14 a background check of the purchaser from a dealer or from the chief of
15 police or the sheriff of the jurisdiction in which the seller or the
16 purchaser resides. The background check shall consist of a check of
17 the national instant criminal background check system.

Exempting Oregon residents with Concealed Handgun Licenses from Brady (NICS) background checks for all firearm background checks would simply bring Oregon in line with its neighboring western states, excluding California.

I don't think Oregonians want to be inferior to Washingtonians – or lumped in with Californians – in anything.

Exemption for Federal Firearm License (FFL) holders

In addition, Oregon should exempt Oregon residents who hold a Federal Firearms License (FFL) – including Federally-licensed firearm collectors who hold a FFL 03 Curio or Relic license – from background checks for private sales, including private sales at gun shows.

In order to obtain a FFL 03 I had to apply to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) and submit a copy of my application to my chief law enforcement officer, the Sheriff of Washington County. The BATFE conducted a background check before issuing me a license. I am subject to yearly inspection by the BATFE and the license must be renewed every three years. I would hope that would be proof enough that my hands are not “the wrong hands”. The license allows me to buy firearms classified by the BATFE as a curio or relic from anywhere in the country and have them shipped to me without additional background checks. But if I bought the same firearm at a local Oregon gun show, under current law (ORS 166.438) the state wants me to go through *another* background check. Under SB 700 if I bought a used firearm from another Oregonian – such as my neighbor the police officer - I would be required to undergo *another* background check. Why? What purpose does that serve? Why do I have to keep proving over and over again that my hands are not “the wrong hands”? Is that sensible or reasonable?

Summary

So-called “universal” background checks will never be universal, because the law will be difficult to enforce on the people we most want to comply with it. The state can increase voluntary compliance with the law, eliminate the increased risk of credit card fraud, and reduce the workload of the Oregon State Police by:

- 1. Eliminating the \$10 fee for private sale background checks, including those performed at gun shows. Creating an incentive for compliance by granting a small income tax credit to those who successfully complete a private firearm sale background check.**
- 2. Exempting Oregon residents who have a valid Oregon Concealed Handgun License (CHL) or Federal Firearm License (FFL) from private firearm sale background checks, including private sales at gun shows. Exempting Oregon resident CHL holders (only) from all firearm sale background checks, including sales performed by licensed dealers.**

Thank you for your attention.

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