

One Hundred Second Legislature - First Session - 2011

Introducer's Statement of Intent

LB512

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: February 23, 2011

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 512 is introduced at the request of the Nebraska State Patrol. It relates to a person's disqualification or qualification from purchasing, transferring or possession of a firearm under 18 U.S.C. 922 (d) (4) and (g) (4).

This bill is one piece of a larger picture involving the National Instant Criminal Background Check System (NICS) for firearms and the NICS Improvement Amendment Act of 2007. In an effort to put this bill into context, on both a state and federal level, the following foundational information is provided:

NICS is the National Instant Criminal Background Check System which was established in the Brady Handgun Violence Prevention Act of 1993 and implemented in 1998. The purpose of the NICS system is to provide a resource for Federal Firearms Licensees (FFL's) to contact for information to be supplied immediately as to whether the transfer of a firearm would violate 18 U.S.C. 922. Per the Brady Bill federal prohibitors for purchasing or possessing a firearm are:

- Convicted of a felony punishable by a term exceeding one year imprisonment or of a misdemeanor punishable by more than two year imprisonment;
- Under indictment or information for a crime punishable by imprisonment for a term exceeding one year;
- A fugitive from justice of subject of an active criminal warrant;
- Illegal drug possession, current use, or a conviction for a controlled substance within the past year;
- In a court proceeding, formally determined to be a mental defective, involuntarily committed to mental institution or deemed incompetent to handle own affairs;
- An alien illegally/unlawfully in the United States;
- Dishonorable discharge from the United States Armed Forces;
- Renounced citizenship of the United States;
- Subject of a protection order involving an intimate partner issued after a hearing at which the accused had an opportunity to participate; or

- Persons convicted of a misdemeanor crime of domestic violence.

In 2007, in the wake of the Virginia Tech shootings, the NICS Improvement Amendment Act (NIAA) was passed to strengthen the Brady Law background check system by encouraging states to submit records to NICS by providing federal financial assistance to help states forward additional records to NICS, and financial penalties if they fail to do so.

The main reaction to the Virginia Tech shooting involved the submission of mental health records to the federal system. The purpose of LB 512 is to assist Nebraska in addressing the submission of mental health board committals and involuntary committals to the federal NICS system. Currently in Nebraska, when a NICS check is done to determine if a person is disqualified or qualified for a firearm, our mental health records are accessible using the Nebraska State Patrol as a point of contact, but are not retained as a part of the national records system. Removing the five year retention time frame in Nebraska Statute 69-2409.01 as proposed in LB 512 will eliminate a barrier from sharing the information.

Additionally, the NICS Improvement Amendment Act requires states to provide for a process of relief for those persons who have been barred from buying or possessing a gun for mental health reasons to seek “relief from disabilities” if they no longer suffer from the condition that originally barred them. LB 512 addresses this element of NIAA by allowing for a person to request a Mental Health Board hearing for a determination and a due process right of appeal to the District Court for a de novo review. This process is for those seeking their 2nd amendment rights restored solely due to a mental health disqualifier.

In Nebraska, this is estimated to be less than five per year. From October 1, 2009, to December 10, 2010, two persons out of 1,012 Purchase Permit requests were denied due to the mental disabilities component, and records indicate no Carry Conceal Weapon requests were denied for this purpose.

Principal Introducer: _____

Senator Mark Christensen