

Curtiss Bishop

SENATE BILL NO. 241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY

Benedict Clark *W. Ryan* *Bob Bonds* *John*
Cresswell *James Simon* *ORR* *Spuch* *Curtiss Bishop*

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A SYSTEM FOR IDENTIFYING PERSONS WHO ARE NOT ELIGIBLE TO PURCHASE HANDGUNS; REQUIRING THE DEPARTMENT OF JUSTICE TO IMPLEMENT A MAGNETIC READER STRIP ON DRIVER'S LICENSES OF INDIVIDUALS NOT ELIGIBLE TO PURCHASE HANDGUNS; REQUIRING THE DEPARTMENT OF JUSTICE TO NOTIFY FIREARMS DEALERS OF PERSONS NOT ELIGIBLE TO PURCHASE HANDGUNS; REQUIRING A COURT TO SEIZE THE DRIVER'S LICENSE OF A PERSON CONVICTED OF A FELONY OR ADJUDICATED SERIOUSLY MENTALLY ILL; PROVIDING PENALTIES; AND PROVIDING A CONTINGENT TERMINATION PROVISION."

John
fore

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 7] is to allow persons to qualify for the purchase of a handgun pursuant to section 103 of Public Law 103-159. [Sections 1 through 7] may not be construed to reduce the right or privilege of a person to purchase or own firearms.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

- (1) "Coded marker" means a magnetic code in the magnetic strip on a driver's license that, when read by a magnetic reader, indicates that the person named on the driver's license is eligible or ineligible to purchase a handgun.
- (2) "Department" means the department of justice provided for in 2-15-2001.
- (3) "Driver's license" means the license to operate a motor vehicle upon a highway in this state pursuant to Title 61, chapter 5, or an identification card issued pursuant to Title 61, chapter 12, part 5.
- (4) (a) "Engaged in business" means a person, firm, partnership, or corporation that deals in firearms as a regular course of trade or business.
- (b) The term does not include a person who:
 - (i) makes occasional sales, exchanges, or purchases of firearms for a personal collection or for a hobby; or

1 (ii) sells all or a part of the person's personal firearms collection.

2 (5) "Firearms dealer" means a person licensed to sell firearms pursuant to 18 U.S.C. 921.

3 (6) "Handgun" means a firearm that has a short stock and is designed to be held and fired by the
4 use of a single hand.

5 (7) "Seriously mentally ill" has the meaning provided in 53-21-102.

6

7 **NEW SECTION. Section 3. Felon or serious mental illness identification -- driver's license.** (1)

8 Prior to the issuance of a new or duplicate driver's license pursuant to Title 61, chapter 5, parts 1 and 2,
9 and Title 61, chapter 12, the department shall conduct a criminal records review to determine if the
10 applicant for the license has previously been convicted of a felony or has been adjudicated seriously
11 mentally ill within the 5-year period prior to application. Beginning November 1, 1998, the department shall
12 place a coded marker in the magnetic strip on a driver's license to indicate that the applicant is ineligible
13 because within the 5-year period prior to application, the applicant:

14 (a) has been convicted of a felony under the laws of the United States, this state, or any other
15 state and has not had rights restored;

16 (b) was adjudicated seriously mentally ill; or

17 (c) has been prohibited from purchasing a firearm for any other reason under state or federal law.

18 (2) Beginning November 1, 1998, if an applicant is not ineligible under subsection (1), the
19 department shall place a coded marker in the magnetic strip indicating eligibility to purchase a firearm. For
20 the purposes of this section, the coded marker placed in the magnetic strip on the driver's license may not
21 contain any other personal information. The magnetic strip must be identifiable only through the use of a
22 magnetic code reader.

23 (3) The magnetic code reader used to read the coded marker must be a device that operates in a
24 read-only capacity and may not use storage or communication capabilities for this activity. The magnetic
25 code reader must indicate whether a driver's license contains a coded marker in the magnetic strip and
26 whether the coded marker indicates eligibility or ineligibility to purchase a firearm. The department must
27 have a magnetic code reader to ensure that a driver's license properly contains a coded marker in the
28 magnetic strip prior to issuing the license.

29

30 **NEW SECTION. Section 4. Background check system.** (1) The department shall create and

1 maintain the state's instant criminal background check system required by section 103 of Public Law
2 103-159. The system must contain the names of persons prohibited from purchasing a firearm by state
3 or federal law.

4 (2) If the department's records indicate that a person has previously been convicted of a felony
5 and the person's rights have not been restored or that the person has been adjudicated seriously mentally
6 ill within the previous 5-year period, the person may request the department to provide the person with a
7 copy of the record. The department shall provide the information within 5 days of receipt of the request
8 if the request is accompanied by the payment of a fee established by the department to cover the cost of
9 producing a copy of the record. The person may submit information that may correct, clarify, or
10 supplement the record. Within 5 days after receipt of the information, the department shall consider the
11 information, investigate the matter, and correct all erroneous records relating to the person and notify any
12 agency that was the source of the original information.

13 (3) A person erroneously identified as having previously been convicted of a felony or having been
14 adjudicated seriously mentally ill within the previous 5-year period and whose records have not been
15 corrected after compliance with subsection (2) may bring an action in district court for damages, injunctive
16 relief, or other appropriate relief. If the person prevails, the court shall award the person reasonable
17 attorney fees as part of the costs.

18 (4) In performing duties, a police officer may use a magnetic code reader to determine the status
19 of a licensee for the officer's own safety. A law enforcement agency is not required to purchase or use
20 magnetic code readers.

21

22 **NEW SECTION. Section 5. Handgun sales.** (1) A firearms dealer engaged in business in Montana
23 shall:

24 (a) for a Montana resident:

25 (i) who possesses a driver's license, use a magnetic code reader to read the coded marker in the
26 magnetic strip on the driver's license pursuant to [section 3]; or

27 (ii) who does not possess a driver's license, comply with the requirements of Public Law 103-159,
28 known as the Brady Handgun Violence Prevention Act;

29 (b) notify local law enforcement officers within 72 hours of an attempt to purchase a handgun by
30 a person whose driver's license contains a coded marker in the magnetic strip;

1 (c) comply with the requirements of Public Law 103-159, known as the Brady Handgun Violence
2 Prevention Act, if the dealer does not use a magnetic code reader.

3 (2) Upon conviction for a violation of subsection (1), a firearms dealer may be imprisoned for up
4 to 90 days or fined not more than \$500, or both.

5 (3) The firearms dealer shall use a magnetic code reader after the applicant has filled out the form
6 required for the purchase of a handgun. The applicant may test the magnetic code reader prior to filling
7 out the form. A driver's license that contains a coded marker in the magnetic strip indicating eligibility to
8 purchase a firearm constitutes a permit for purposes of 18 U.S.C. 922.

9
10 **NEW SECTION. Section 6. Driver's license procedures -- penalty.** (1) A person who is issued a
11 Montana driver's license containing a coded marker in the magnetic strip may not alter, modify, or
12 counterfeit a driver's license for the purpose of circumventing a background check required for the purchase
13 of a handgun. A person violating this subsection is guilty of a felony and upon conviction shall be punished
14 by imprisonment for not less than 1 or more than 10 years or by a fine not to exceed \$25,000, or both.

15 (2) The district court shall seize the driver's license of a person convicted of a felony or adjudicated
16 seriously mentally ill. The court shall forward the license to the department. If the person wants a new
17 license, the department shall issue a license containing a coded marker on the magnetic strip indicating the
18 person's changed status.

19 (3) After October 1, 1995, upon compliance with 61-5-111, a person possessing a driver's license
20 that does not contain a magnetic strip may apply for a duplicate license at any time in order to obtain a
21 license containing a magnetic strip.

22
23 **NEW SECTION. Section 7. Reports.** (1) The department shall issue a report to firearms dealers
24 engaged in business in Montana. The report may be issued quarterly or more often as determined by the
25 department. The report may include the names of persons who:

26 (a) have outstanding warrants issued against them;

27 (b) have been convicted of a felony and who have not had their rights restored or have been
28 adjudicated seriously mentally ill within the previous 5-year period and who have not submitted their
29 driver's licenses to the department; and

30 (c) have been convicted of a felony and who have not had their rights restored or have been

1 adjudicated seriously mental ill within the previous 5-year period in other states.

2 (2) The names in the report must be listed in a manner that conceals the nature of the offenses.
3 The report must be sent by certified mail. A firearms dealer who purposely or knowingly sells a handgun
4 to a person listed in the most recent report is guilty of an offense and upon conviction shall be imprisoned
5 for not more than 1 year or fined up to \$1,000, or both. A firearms dealer who violates this section is also
6 liable for a civil penalty of up to \$500 for failure to notify local law enforcement officers of the attempted
7 purchase of a handgun as required by [section 5].

8

9 **NEW SECTION. Section 8. Contingent termination.** [Sections 1 through 8] terminate on the date
10 on which the governor by executive order certifies that Public Law 103-159, known as the Brady Handgun
11 Violence Prevention Act, is invalidated by a court of competent jurisdiction, is repealed, or is terminated.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0241, as introduced

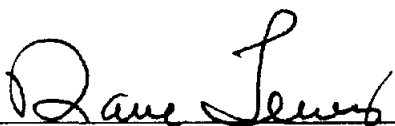
DESCRIPTION OF PROPOSED LEGISLATION:

A bill establishing a system for identifying persons who are not eligible to purchase handguns; requiring the Department of Justice to implement a magnetic reader stripe on driver's licenses of individuals not eligible to purchase handguns; requiring the Department of Justice to notify firearms dealers of persons not eligible to purchase handguns; and requiring a court to seize the driver's license of a person convicted of a felony or adjudicated to be seriously mentally ill.

ASSUMPTIONS:

1. Background checks required by this bill would be performed by the Identification Bureau, Law Enforcement Services Division, Department of Justice.
2. Each of the 190,000 driver licenses and identification (ID) cards issued annually would require a new background check prior to issuance, in order to assure that the most current information is used in the compliance process. The background checks required under the provisions of SB241 would require that driver licenses not be "instant issue" to allow adequate time to complete the background checks and to place the appropriate marker on each driver's license or ID card magnetic strip. Depending on the staffing available, this bill may create a 10-30 day delay in the issuance of driver licenses and ID cards.
3. It is estimated that 1.00 FTE can perform approximately 4,350 manual background checks per year. (Note: Some background checks may take more than two to four hours to complete.) Therefore, 43.70 FTE (190,000 driver licenses & ID cards issued annually/4,350 average number of background checks performed annually by 1.00 FTE = 43.70 FTE) would be required to perform the background checks required on each licensed driver or applicant for an ID card. The bill is effective October 1, 1995, so the additional FTE for FY96 is 32.78 FTE (43.70 x 9/12). The Department of Justice is presently working on improvements to the criminal history record process which, in the future, would enable the department to conduct instant checks as required by federal mandates. This would eventually reduce the need for manual checks and FTE.
4. The additional personal services expenses would be approximately \$618,661 in FY96 (43.70 Grade 7 FTE x \$18,876 x 9/12) and \$827,547 in FY97 (43.70 Grade 7 FTE x \$18,937).
5. Operating expenses (including rent, telephone charges, and utilities) to support the 43.70 FTE would be approximately \$56,000 in FY96 and \$75,000 in FY97. Additional operating expenses for computer processing time (CPU) would be approximately \$11,250 in FY96 and \$15,000 in FY97.
6. Total federal firearms licensees of 3,476 were registered as of December 10, 1993. Approximately 3,500 reports would be prepared at a cost of approximately \$2,400 (\$800 CPU time per quarter x 3 quarters) in FY96 and \$3,200 in FY97. These reports will be mailed quarterly by certified mail to each firearms licensee; approximately 14,000 reports annually at a cost of approximately \$23,625 in FY96 (\$14,000 x \$2.25 x 9/12) and \$31,500 in FY97 (14,000 x \$2.25).

(continued)

 1-30-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0241, as introduced

SB 241

(continued)

7. Start-up expenses in FY96 only would include \$25,000 for computer programming required for batch processing and \$118,000 for office furniture and equipment (personal computers, desks, chairs, and telephones). The new furniture and equipment averages \$2,700 per FTE.

FISCAL IMPACT:

Law Enforcement Services Division:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	32.78	43.70
Personal Services	618,661	827,547
Operating Expenses	118,275	124,700
Equipment	<u>118,000</u>	<u>0</u>
Total	854,936	952,247

Funding:

General Fund (01)	854,936	952,247
-------------------	---------	---------

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Presently the background checks would have to be done manually. The Department of Justice is working on improvements to the criminal history record program which, in the future, would enable the department to conduct instant checks as required by federal mandates. This would significantly reduce the long-term need for manual checks and FTE.

In November, 1998, the Motor Vehicle Division of the Department of Justice would incur expenditures of approximately \$15,000 in programming expenses to add the marker to the magnetic strip placed on each driver's license and ID card beginning November 1, 1998. An additional \$300 would be incurred for a magnetic code reader to confirm the accuracy and placement of the marker on the magnetic strip.

TECHNICAL NOTES:

The federal law requiring instant checks prior to the sale of a firearm is effective November 30, 1998, rather than November 1, 1998, as indicated in this bill.

The introduced version of SB241 requires that the information be captured October 1, 1995, and indicates November 1, 1998, as the date the marker must be placed on the driver licenses and ID cards. The bill is unclear as to where, and in what format, this captured information is to be stored beginning October 1, 1995.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0241, as amended


DESCRIPTION OF PROPOSED LEGISLATION:

A bill establishing a system for identifying persons who are not eligible to purchase handguns; requiring the Department of Justice to implement a coded marker in the magnetic reader stripe on driver's licenses of individuals not eligible to purchase handguns; requiring the Department of Justice to notify firearms dealers of persons not eligible to purchase handguns; and requiring a court to seize the driver's license of a person convicted of a felony or adjudicated to be seriously mentally ill.

ASSUMPTIONS:

1. Background checks required by this bill would be performed by the Identification Bureau, Law Enforcement Services Division, Department of Justice.
2. Beginning October 1, 1995, there will be approximately 4,400 individuals annually who request a coded marker on driver licenses and identification (ID) cards that will require a background check to determine eligibility to purchase a firearm. The estimate for the number of individuals is based upon 20% of the 22,000 background checks for firearm purchases that were performed during calendar year 1994. The 20% estimate assumes that marker requests will be made at the rate of one request for every five firearm purchases. The estimate assumes that the coded marker will be requested primarily by frequent purchasers of firearms that account for approximately 20% of the annual purchases.
3. It is estimated that 1.00 FTE can perform approximately 4,350 manual background checks per year. (Note: Some background checks may take more than two to four hours to complete.) Therefore, 1.00 grade 7 FTE (4,400 driver licenses and ID cards issued manually/4,350 average number of background checks performed annually by 1.00 FTE) would be required to perform the background checks required on applicants requesting a marker. The bill is effective October 1, 1995, so the additional FTE for FY96 is 0.75 FTE (1.00 x 9/12).
4. Operating expenses (including rent, telephone charges, and utilities) to support the 1.00 FTE would be approximately \$1,414 in FY96 and \$1,885 in FY97. Additional operating expenses for computer processing time (CPU) would be approximately \$265 in FY96 and \$350 in FY97.
5. Total federal firearms licensees of 3,476 were registered as of December 10, 1993. It is assumed that because of the subsequent increase in the federal firearms license fees, that number will decline to about 2,000 by FY96. Approximately 2,000 reports would be prepared each quarter at a cost of approximately \$1,380 (\$460 CPU time per quarter x 3 quarters) in FY96 and \$1,840 in FY97. These reports will be mailed quarterly by certified mail to each firearms licensee; approximately 8,000 reports will be mailed annually at a cost of approximately \$13,500 in FY96 (8,000 x \$2.25 x 9/12) and \$18,000 in FY97 (8,000 x \$2.25).

(continued)

 2-18-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-18-95
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0241, as amended

SB 241-#2

(continued)

7. Start-up expenses in FY96 only would include \$25,000 for computer programming required for batch processing and \$2,900 for office furniture and equipment (personal computers, desks, chairs, and telephones).

FISCAL IMPACT:

Law Enforcement Services Division:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	0.75	1.00
Personal Services	14,157	18,937
Operating Expenses	41,559	22,075
Equipment	<u>2,900</u>	<u>0</u>
Total	58,616	41,012
<u>Funding:</u>		
General Fund (01)	58,616	41,012

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Presently the background checks would have to be done manually. The Department of Justice is working on improvements to the criminal history record program which, in the future, would enable the department to conduct instant checks as required by federal mandates. This would significantly reduce the long-term need for manual checks and FTE.

In November, 1998, the Motor Vehicle Division of the Department of Justice would incur expenditures of approximately \$15,000 in programming expenses to add the marker to the magnetic strip placed on each driver's license and ID card beginning November 1, 1998. An additional \$300 would be incurred for a magnetic code reader to confirm the accuracy and placement of the marker on the magnetic strip.

TECHNICAL NOTES:

The federal law requiring instant checks prior to the sale of a firearm is effective November 30, 1998, rather than November 1, 1998, as indicated in this bill.

The introduced version of SB241 requires that the information be captured October 1, 1995, and indicates November 1, 1998, as the date the marker must be placed on the driver licenses and ID cards. The bill is unclear as to where, and in what format, this captured information is to be stored beginning October 1, 1995.