

# Shooters Committee on Political Education

## Position Paper



A 75 Kavanagh

Same as S 53 Peralta

**Requires the employees of dealers in firearms and gunsmiths to submit to a criminal background check.**

### PURPOSE

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This proposal would require that all employees of a gunsmith or dealer in firearms submit to a background check in the form of a National Instant Check System (NICS) check. This would entail the prospective employee completing an application for submission by the dealer to the Division of Criminal Justice Services (DCJS). DCJS would then run a NICS check, and if the individual passes, issue an employment certificate. Individuals holding a license under Section 400.00 or 400.01 would be exempt.

### POSITION

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This bill should not be enacted. It is a solution in search of a problem. It doesn't address any defined issue or failure of the existing regulatory structure; it is not clear to what purpose it is directed. The sole justification stated is that since customers are required by federal law to submit to a National Instant Check System (NICS) check prior to taking delivery of a firearm, dealer employees should also undergo some form of check. This is a poorly drafted bill that seems designed primarily to impose a financial and regulatory burden on a specific type of business for no legitimate governmental purpose.

#### **Dealers are already quite careful who has access to and handles firearms.**

Dealers are well aware of the necessity for prudent business practices when handling potentially dangerous merchandise. It is the dealer who is ultimately responsible, both morally and in law, for any failure in his or her business practices. They are, by necessity, quite careful as to whom they employ in positions of trust. One of the purposes in licensing dealers in firearms is to make certain that a competent entity or individual is responsible for the operation of the business and ensuring compliance with all legal requirements. This proposal is, in effect, redundant.

#### **There will be a cost to both the dealer and the state.**

This proposal would create another form and another set of records to be maintained by the dealer and, presumably, inspected. The sponsor states that there will be no fiscal impact on the state. How the DCJS is going to set up a procedure for receiving, processing and recording applications, and a system for issuing certificates at no cost eludes us. There is no mention of any fee that might be imposed by DCJS or any other state agency.

#### **It is not clear that this use of the NICS is allowed under Federal law.**

We question whether or not this is permitted under current federal regulations that limit the use of the NICS system by state and local criminal justice agencies to use in permit or license processing involving firearms or explosives. See 28 CFR §25.6(a) and 28 CFR §25.6(j)(1). This is an attempt to disguise an employment check as a license. The use of the NICS for performing background checks of employees was specifically precluded under federal regulations.