MEMORANDUM

DATE: December 15, 2013
TO: KCBA Board of Trustees
FROM: KCBA Public Policy Committee
RE: Recommendation for Support of Universal Background Checks

The KCBA Public Policy Committee and its Gun Safety Subcommittee recommend that the KCBA Board of Trustees adopt the attached proposed resolution to (1) support the expansion of background checks required for sales of firearms by licensed firearms dealers in Washington to include all private sales and transfers of firearms occurring in the state; (2) support the power of the people of Washington to regulate their own affairs, consistent with Federal law, including, without further limitation, the power to regulate the possession, sale, and transfer of firearms in the state; (3) support the adoption of Initiative 594; and (4) oppose the adoption of Initiative 591.

Enclosed with this memorandum are reference materials related to Initiative 594, Initiative 591, and the proponents of both measures.

Background

The KCBA Public Policy Committee and its Gun Safety Subcommittee recently heard arguments from supporters of Initiative 594 and supporters of Initiative 591.

Lobbyists for the Washington Alliance for Gun Responsibility, supporters of Initiative 594, attended a regularly scheduled meeting of the Public Policy Committee and explained the goals and compromises behind Initiative 594 and the reasons for taking the initiative to the citizens versus lobbying the state Legislature.

Afterwards, members of the Gun Safety Subcommittee agreed that it would be appropriate for the Public Policy Committee and the Subcommittee to hear from the opposition to Initiative 594 before making a recommendation to the Board. The leading opposition to Initiative 594 consists of Mr. Alan Gottlieb of Bellevue, Washington; his Second Amendment Foundation; and his Citizens Committee for the Right to Keep and Bear Arms. The Citizens Committee for the Right to Keep and Bear Arms is also the sponsor of Initiative 591.

The Gun Safety Subcommittee reached out to Mr. Gottlieb and invited him to present to a specially organized meeting of the Public Policy Committee. Mr. Gottlieb accepted the invitation and, thereafter, met with several members of the Committee and the Subcommittee and explained his organization’s opposition to Initiative 594 and support for Initiative 591.

Mr. Gottlieb’s stated reason for his organization bringing Initiative 591 to the citizens at this time is to force the state Legislature to address the issue of universal background checks in the next
legislative session in advance of the citizens’ votes in the November 2014 ballot. The implication from supporters of Initiative 594 is that Initiative 591 is intended to confuse the issue and draw support away from Initiative 594. Since the presentations described above, both initiatives have received enough signatures to qualify for the ballot in 2014.

After hearing from Mr. Gottlieb, the Public Policy Committee met again at a regularly scheduled meeting and discussed the arguments presented by the proponents of both initiatives and moved overwhelmingly to support universal background checks, support Initiative 594, and oppose Initiative 591.

Initiative 594

Initiative 594 aims to modify Chapter 9.41 of the Revised Code of Washington (Firearms and Dangerous Weapons) to expand the requirement of background checks for the sale and purchase of firearms by licensed dealers to include the sale and transfer of firearms by private sellers. Currently, background checks are only required when an individual purchases a firearm from a licensed dealer, whereas sales and transfers by a private seller, whether in person, at a gun show, or online, do not require a background check. The public policy basis for background checks is to determine whether or not a purchaser of a firearm is permitted under Chapter 9.41 to possess a firearm. The Chapter prohibits possession of firearms by individuals convicted or found not guilty by reason of insanity or a serious offense, as defined in the Chapter, or certain crimes committed against family or household members, as enumerated in the Chapter, and persons previously involuntarily committed for mental health treatment pursuant to procedures outlined in Chapters 71.05 (Mental Illness) and 10.77 (Criminally Insane - Procedures) of the Revised Code. Initiative 594 expands the existing background check requirements to include private sales and transfers, while providing for several exceptions for such things as bequeathing, gifting to family members, temporary transfers among spouses, temporary transfers in connection with hunting and sport, transfers needed to prevent imminent harm, and the like. If Initiative 594 is adopted, private buyers and sellers who wish to buy and sell a firearm will be required to present themselves to a licensed dealer and arrange for the dealer to perform a background check or be in violation of the law. Proponents of Initiative 594 point to data that an estimated 40% of gun sales and transfers are from unlicensed dealers and thus are not subject to any background checks.

Opponents of Initiative 594 point to anecdotal evidence that background checks do not prevent – or, more precisely, would not have prevented – certain crimes involving firearms, including the mass shootings at Sandy Hook and Virginia Tech. Opponents also point to anecdotal evidence that the database used to conduct background checks are both over-inclusive and under-inclusive. This is due, at least in part, to a lack of cooperation by certain states in populating, updating, and otherwise maintaining the database. Further, opponents express concern that, without protections, the requirement that private buyers and sellers meet at a licensed dealer to have a background check conducted will become overly burdensome and expensive. Finally, although opponents of Initiative 594 concede that lists of firearms purchases and transfers are not maintained in any central location and that there is little or no risk of such records being misused by government authorities, they continue to express fear of a universal registry of firearms.
The implication by opponents of Initiative 594 is that, if there are any concerns about background checks being ineffective or problematic, it is better for the Legislature and the citizenry to take no action. However, Mr. Gottlieb admitted to the Public Policy Committee that, as long as there is a state law prohibiting the possession of firearms by certain individuals, there ought to be a means of determining whether a recipient of a firearm is permitted by law to possess that firearm. Further, in response to the question of whether there is an effective solution to violence involving firearms, including mass shootings, that supporters of the Second Amendment Foundation or the Citizens Committee for the Right to Keep and Bear Arms would support, Mr. Gottlieb answered “universal background checks,” presumably with protections in place to eliminate any risk that universal background checks become overly burdensome or expensive to private sellers and buyers.

It is worth noting that, proponents of Initiative 594 spoke to the Public Policy Committee about data they have that shows that every citizen of Washington lives within a one-hour drive of a licensed dealer. Also, proponents of Initiative 594 believe that market forces will ensure that background checks remain affordable, even for private buyers and sellers.

**Initiative 591**

Initiative 591 seeks to prohibit any government agency of the State of Washington from requiring any background checks on the recipient of a firearm, including, without limitation, by means of a private sale or transfer, unless a uniform national standard is required. Initiative 591 would also make it unlawful for any agency of the State of Washington from confiscating guns or other firearms from citizens of the state without due process. Initiative 591 would modify existing law by adding two statements, similar to the foregoing, to Chapter 9.41 of the Revised Code.

At the time that members of the Public Policy Committee met with the proponents of Initiative 594, the members of the Committee had not had an opportunity to meet with proponents of Initiative 591, nor had Initiative 591 yet received the requisite signatures. As a result, the Committee did not have an opportunity to hear from proponents of Initiative 594 about their specific opposition to Initiative 591, if any.

However, members of the Committee had their own specific concerns about Initiative 591. Setting the politics of Initiative 591 aside, members expressed concern for the fact that the text of Initiative 591 implies that due process protection is not already in place to protect against the unlawful confiscation of firearms in Washington. They also expressed concern that Initiative 591 unnecessarily cedes to Congress and Federal regulators exclusive control over laws and regulations concerning background checks in Washington. Currently, no uniform national standard exists for background checks. Initiative 591 implies that a uniform national standard either exists or is forthcoming, but no uniform national standard exists and several Committee members pointed out that there is no reason to believe that such a uniform national standard is forthcoming. As recently as this year, Congress failed to adopt universal background checks, despite the fact that universal background checks are supported by 90% of US voters. Committee members expressed concern that Initiative 591 would prevent the state Legislature
and the citizenry from taking reasonable steps to enforce existing law intended to promote public safety.

**Conclusion**

The Public Policy Committee recommends that the Board adopt the attached proposed resolution in support of universal background checks, thereby supporting the power of the people of Washington to regulate the possession, sale, and transfer of firearms in the state in order to, among other things, promote public safety and, including within that power, the power to require background checks in connection with all sales and transfers of guns and other firearms, including sales and transfers by private buyers and sellers. The state prohibits certain individuals from possessing firearms, and the Committee members believe that universal background checks are a legitimate, rational, and reasonable means for preventing the sale and transfer of firearms to such individuals.