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HOUSE BILL 2439

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State of Washington

53rd Legislature

1994 Regular Session

By Representative Appelwick

Read first time 01/14/94. Referred to Committee on Judiciary.

1 AN ACT Relating to firearms dealers; amending RCW 9.41.090,  
2 9.41.093, 9.41.098, 9.41.100, 9.41.110, 82.04.300, and 82.32.030;  
3 reenacting and amending RCW 9.41.010; and adding a new section to  
4 chapter 9.41 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.41.010 and 1992 c 205 s 117 and 1992 c 145 s 5 are  
7 each reenacted and amended to read as follows:

8 (1) "Short firearm" or "pistol" as used in this chapter means any  
9 firearm with a barrel less than twelve inches in length.

10 (2) "Crime of violence" as used in this chapter means:

11 (a) Any of the following felonies, as now existing or hereafter  
12 amended: Any felony defined under any law as a class A felony or an  
13 attempt to commit a class A felony, criminal solicitation of or  
14 criminal conspiracy to commit a class A felony, manslaughter in the  
15 first degree, manslaughter in the second degree, indecent liberties if  
16 committed by forcible compulsion, rape in the second degree, kidnapping  
17 in the second degree, arson in the second degree, assault in the second  
18 degree, assault of a child in the second degree, extortion in the first

1 degree, burglary in the second degree, and robbery in the second  
2 degree;

3 (b) Any conviction or adjudication for a felony offense in effect  
4 at any time prior to July 1, 1976, which is comparable to a felony  
5 classified as a crime of violence in subsection (2)(a) of this section;  
6 and

7 (c) Any federal or out-of-state conviction or adjudication for an  
8 offense comparable to a felony classified as a crime of violence under  
9 subsection (2) (a) or (b) of this section.

10 (3) "Firearm" as used in this chapter means a weapon or device from  
11 which a projectile may be fired by an explosive such as gunpowder.

12 (4) "~~((Commercial-seller)) Dealer~~" as used in this chapter means a  
13 person engaged in the business of selling firearms at wholesale or  
14 retail who has, or is required to have, a federal firearms license.

15 **Sec. 2.** RCW 9.41.090 and 1988 c 36 s 2 are each amended to read as  
16 follows:

17 (1) In addition to the other requirements of this chapter, no  
18 ~~((commercial-seller-shall)) dealer~~ may deliver a pistol to the  
19 purchaser thereof until:

20 (a) The purchaser produces a valid concealed pistol license and the  
21 ~~((commercial-seller)) dealer~~ has recorded the purchaser's name, license  
22 number, and issuing agency, such record to be made in triplicate and  
23 processed as provided in subsection (4) of this section; or

24 (b) The ~~((seller)) dealer~~ is notified in writing by the chief of  
25 police of the municipality or the sheriff of the county that the  
26 purchaser meets the requirements of RCW 9.41.040 and that the  
27 application to purchase is granted; or

28 (c) Five consecutive days including Saturday, Sunday and holidays  
29 have elapsed from the time of receipt of the application for the  
30 purchase thereof as provided herein by the chief of police or sheriff  
31 designated in subsection (4) of this section, and, when delivered, said  
32 pistol shall be securely wrapped and shall be unloaded. However, if  
33 the purchaser does not have a valid permanent Washington driver's  
34 license or state identification card or has not been a resident of the  
35 state for the previous consecutive ninety days, the waiting period  
36 under this subsection (1)(c) shall be up to sixty days.

37 (2) In any case under subsection (1)(c) of this section where the  
38 applicant has an outstanding warrant for his or her arrest from any

1 court of competent jurisdiction for a felony or misdemeanor, the  
2 ((seller)) dealer shall hold the delivery of the pistol until the  
3 warrant for arrest is served and satisfied by appropriate court  
4 appearance. The local jurisdiction for purposes of the sale shall  
5 confirm the existence of outstanding warrants within seventy-two hours  
6 after notification of the application to purchase a pistol is received.  
7 The local jurisdiction shall also immediately confirm the satisfaction  
8 of the warrant on request of the ((seller)) dealer so that the hold may  
9 be released if the warrant was for a crime other than a crime of  
10 violence.

11 (3) In any case where the chief or sheriff of the local  
12 jurisdiction has reasonable grounds based on the following  
13 circumstances: (a) Open criminal charges, (b) pending criminal  
14 proceedings, (c) pending commitment proceedings, (d) an outstanding  
15 warrant for a crime of violence, or (e) an arrest for a crime of  
16 violence if the records of disposition have not yet been reported or  
17 entered sufficiently to determine eligibility to purchase a pistol, the  
18 local jurisdiction may hold the sale and delivery of the pistol beyond  
19 five days up to thirty days in order to confirm existing records in  
20 this state or elsewhere. After thirty days, the hold will be lifted  
21 unless an extension of the thirty days is approved by a local district  
22 court or municipal court for good cause shown. An applicant shall be  
23 notified of each hold placed on the sale by local law enforcement and  
24 of any application to the court for additional hold period to confirm  
25 records or confirm the identity of the applicant.

26 (4) At the time of applying for the purchase of a pistol, the  
27 purchaser shall sign in triplicate and deliver to the ((seller)) dealer  
28 an application containing his or her full name, address, place of  
29 birth, and the date and hour of the application; the applicant's  
30 driver's license number or state identification card number; and a  
31 description of the weapon including, the make, model, caliber and  
32 manufacturer's number; and a statement that the purchaser is eligible  
33 to own a pistol under RCW 9.41.040. The application shall contain a  
34 warning substantially as follows:

35 CAUTION: Although state and local laws do not differ, federal  
36 law and state law on the possession of firearms differ. If you  
37 are prohibited by federal law from possessing a firearm, you  
38 may be prosecuted in federal court. State permission to  
39 purchase a firearm is not a defense to a federal prosecution.

1 The purchaser shall be given a copy of the department of fish and  
2 wildlife pamphlet on the legal limits of the use of firearms, firearms  
3 safety, and the fact that local laws and ordinances on firearms are  
4 preempted by state law and must be consistent with state law.

5 The (~~seller~~) dealer shall, by the end of the business day, sign  
6 and attach his or her address and deliver the original of the  
7 application and such other documentation as required under subsection  
8 (1) of this section to the chief of police of the municipality or the  
9 sheriff of the county of which the (~~seller~~) dealer is a resident.  
10 The (~~seller~~) dealer shall deliver the pistol to the purchaser  
11 following the period of time specified in this section unless the  
12 (~~seller~~) dealer is notified in writing by the chief of police of the  
13 municipality or the sheriff of the county, whichever is applicable,  
14 denying the purchaser's application to purchase and the grounds  
15 thereof. The application shall not be denied unless the purchaser  
16 fails to meet the requirements specified in RCW 9.41.040. The chief of  
17 police of the municipality or the county sheriff shall maintain a file  
18 containing the original of the application to purchase a pistol.

19 **Sec. 3.** RCW 9.41.093 and 1969 ex.s. c 227 s 2 are each amended to  
20 read as follows:

21 The following shall be exempt from the provisions of RCW 9.41.090  
22 (~~as now or hereinafter amended~~): Sales (~~by wholesalers~~) to  
23 licensed dealers for resale; and the sale of antique pistols exempted  
24 by the provisions of RCW 9.41.150(~~, as amended~~).

25 **Sec. 4.** RCW 9.41.098 and 1993 c 243 s 1 are each amended to read  
26 as follows:

27 (1) The superior courts and the courts of limited jurisdiction of  
28 the state may order forfeiture of a firearm which is proven to be:

29 (a) Found concealed on a person not authorized by RCW 9.41.060 or  
30 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute  
31 defense to forfeiture if the person possessed a valid Washington  
32 concealed pistol license within the preceding two years and has not  
33 become ineligible for a concealed pistol license in the interim.  
34 Before the firearm may be returned, the person must pay the past due  
35 renewal fee and the current renewal fee;

36 (b) Commercially sold to any person without an application as  
37 required by RCW 9.41.090;

1 (c) Found in the possession or under the control of a person at the  
2 time the person committed or was arrested for committing a crime of  
3 violence or a crime in which a firearm was used or displayed or a  
4 felony violation of the Uniform Controlled Substances Act, chapter  
5 69.50 RCW;

6 (d) Found concealed on a person who is in any place in which a  
7 concealed pistol license is required, and who is under the influence of  
8 any drug or under the influence of intoxicating liquor, having 0.10  
9 grams or more of alcohol per two hundred ten liters of breath or 0.10  
10 percent or more by weight of alcohol in the person's blood, as shown by  
11 analysis of the person's breath, blood, or other bodily substance;

12 (e) Found in the possession of a person prohibited from possessing  
13 the firearm under RCW 9.41.040;

14 (f) Found in the possession of a person free on bail or personal  
15 recognizance pending trial, appeal, or sentencing for a crime of  
16 violence or a crime in which a firearm was used or displayed, except  
17 that violations of Title 77 RCW shall not result in forfeiture under  
18 this section;

19 (g) Found in the possession of a person found to have been mentally  
20 incompetent while in possession of a firearm when apprehended or who is  
21 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

22 (h) Known to have been used or displayed by a person in the  
23 violation of a proper written order of a court of general jurisdiction;  
24 or

25 (i) Known to have been used in the commission of a crime of  
26 violence or a crime in which a firearm was used or displayed or a  
27 felony violation of the ((~~Uniformed~~—[Uniform])) Uniform Controlled  
28 Substances Act, chapter 69.50 RCW.

29 (2) Upon order of forfeiture, the court in its discretion shall  
30 order destruction of any firearm that is illegal for any person to  
31 possess. A court may temporarily retain forfeited firearms needed for  
32 evidence.

33 (a) Except as provided in (b), (c), and (d) of this subsection,  
34 firearms that are: (i) Judicially forfeited and no longer needed for  
35 evidence; or (ii) forfeited due to a failure to make a claim under RCW  
36 63.32.010 or 63.40.010; may be disposed of in any manner determined by  
37 the local legislative authority. Any proceeds of an auction or trade  
38 may be retained by the legislative authority. This subsection (2)(a)  
39 applies only to firearms that come into the possession of the law

1 enforcement agency after June 30, 1993, and applies only if the law  
2 enforcement agency has complied with (b) of this subsection.

3 By midnight, June 30, 1993, every law enforcement agency shall  
4 prepare an inventory, under oath, of every firearm that has been  
5 judicially forfeited, has been seized and may be subject to judicial  
6 forfeiture, or that has been, or may be, forfeited due to a failure to  
7 make a claim under RCW 63.32.010 or 63.40.010.

8 (b) Except as provided in (c) of this subsection, of the  
9 inventoried firearms a law enforcement agency shall destroy illegal  
10 firearms, may retain a maximum of ten percent of legal forfeited  
11 firearms for agency use, and shall either:

12 (i) Comply with the provisions for the auction of firearms in RCW  
13 9.41.098 that were in effect immediately preceding May 7, 1993; or

14 (ii) Trade, auction, or arrange for the auction of, rifles and  
15 shotguns. In addition, the law enforcement agency shall either trade,  
16 auction, or arrange for the auction of, short firearms, or shall pay a  
17 fee of twenty-five dollars to the state treasurer for every short  
18 firearm neither auctioned nor traded, to a maximum of fifty thousand  
19 dollars. The fees shall be accompanied by an inventory, under oath, of  
20 every short firearm listed in the inventory required by (a) of this  
21 subsection, that has been neither traded nor auctioned. The state  
22 treasurer shall credit the fees to the firearms range account  
23 established in RCW 77.12.720. All trades or auctions of firearms under  
24 this subsection shall be to (~~commercial sellers~~) licensed dealers.  
25 Proceeds of any auction less costs, including actual costs of storage  
26 and sale, shall be forwarded to the firearms range account established  
27 in RCW 77.12.720.

28 (c) Antique firearms as defined by RCW 9.41.150 and firearms  
29 recognized as curios, relics, and firearms of particular historical  
30 significance by the United States treasury department bureau of  
31 alcohol, tobacco, and firearms are exempt from destruction and shall be  
32 disposed of by auction or trade to (~~commercial sellers~~) licensed  
33 dealers.

34 (d) Firearms in the possession of the Washington state patrol on or  
35 after May 7, 1993, that are judicially forfeited and no longer needed  
36 for evidence, or forfeited due to a failure to make a claim under RCW  
37 63.35.020, must be disposed of as follows: (i) Firearms illegal for  
38 any person to possess must be destroyed; (ii) the Washington state  
39 patrol may retain a maximum of ten percent of legal firearms for agency

1 use; and (iii) all other legal firearms must be auctioned or traded to  
2 (~~commercial sellers~~) licensed dealers. The Washington state patrol  
3 may retain any proceeds of an auction or trade.

4 (3) The court shall order the firearm returned to the owner upon a  
5 showing that there is no probable cause to believe a violation of  
6 subsection (1) of this section existed or the firearm was stolen from  
7 the owner or the owner neither had knowledge of nor consented to the  
8 act or omission involving the firearm which resulted in its forfeiture.

9 (4) A law enforcement officer of the state or of any county or  
10 municipality may confiscate a firearm found to be in the possession of  
11 a person under circumstances specified in subsection (1) of this  
12 section. After confiscation, the firearm shall not be surrendered  
13 except: (a) To the prosecuting attorney for use in subsequent legal  
14 proceedings; (b) for disposition according to an order of a court  
15 having jurisdiction as provided in subsection (1) of this section; or  
16 (c) to the owner if the proceedings are dismissed or as directed in  
17 subsection (3) of this section.

18 **Sec. 5.** RCW 9.41.100 and 1935 c 172 s 10 are each amended to read  
19 as follows:

20 (~~No retail~~) Every dealer shall (~~sell or otherwise transfer, or~~  
21 ~~expose for sale or transfer, or have in his possession with intent to~~  
22 ~~sell, or otherwise transfer, any pistol without being~~) be licensed as  
23 (~~hereinafter~~) provided in RCW 9.41.110 and shall register with the  
24 department of revenue as provided in chapters 82.04 and 82.32 RCW.

25 **Sec. 6.** RCW 9.41.110 and 1979 c 158 s 2 are each amended to read  
26 as follows:

27 The duly constituted licensing authorities of any city, town, or  
28 political subdivision of this state shall grant licenses in forms  
29 prescribed by the director of licensing effective for not more than one  
30 year from the date of issue permitting the licensee to sell pistols  
31 within this state subject to the following conditions, for breach of  
32 any of which the license shall be forfeited and the licensee subject to  
33 punishment as provided in RCW 9.41.010 through 9.41.160. A license  
34 issuing authority shall forward a copy of each license granted to the  
35 department of licensing. The department of licensing shall notify the  
36 department of revenue of the name and address of each dealer licensed  
37 under this section.

1       (1) No dealer shall qualify for a license under this section  
2 without first receiving a federal firearms license.

3       (2) The business shall be carried on only in the building  
4 designated in the license.

5       (~~(+2)~~) (3) The license or a copy thereof, certified by the issuing  
6 authority, shall be displayed on the premises where it can easily be  
7 read.

8       (~~(+3)~~) (4) No pistol shall be sold (a) in violation of any  
9 provisions of RCW 9.41.010 through 9.41.160, nor (b) shall a pistol be  
10 sold under any circumstances unless the purchaser is personally known  
11 to the (~~seller~~) dealer or shall present clear evidence of his or her  
12 identity.

13       (~~(+4)~~) (5) A true record in triplicate shall be made of every  
14 pistol sold, in a book kept for the purpose, the form of which may be  
15 prescribed by the director of licensing and shall be personally signed  
16 by the purchaser and by the person effecting the sale, each in the  
17 presence of the other, and shall contain the date of sale, the caliber,  
18 make, model and manufacturer's number of the weapon, the name, address,  
19 occupation, (~~color~~) and place of birth of the purchaser and a  
20 statement signed by the purchaser that he or she has never been  
21 convicted in this state or elsewhere of a crime of violence. One copy  
22 shall within six hours be sent by (~~registered~~) certified mail to the  
23 chief of police of the municipality or the sheriff of the county of  
24 which the dealer is a resident; the duplicate the dealer shall within  
25 seven days send to the director of licensing; the triplicate the dealer  
26 shall retain for six years.

27       (~~(+5)~~) (6) Subsections (2) through (5) of this section shall not  
28 apply to sales at wholesale, except that sales at wholesale may not be  
29 conducted from a private dwelling.

30       (~~(+6)~~) (7) The dealer's licenses authorized to be issued by this  
31 section are general licenses covering all sales by the licensee within  
32 the effective period of the licenses.

33       (~~(+7)~~) (8) Except as provided in RCW 9.41.090 (~~as now or~~  
34 ~~hereinafter amended~~), every city, town and political subdivision of  
35 this state is prohibited from requiring the purchaser to secure a  
36 permit to purchase or from requiring the dealer to secure an individual  
37 permit for each sale.

38       The fee paid for issuing said license shall be five dollars which  
39 fee shall be paid into the state treasury.



1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 9.41 RCW  
2 to read as follows:

3        (1) At least once every twelve months, the department of licensing  
4 shall obtain a list of federally licensed dealers with business  
5 premises in the state of Washington from the United States bureau of  
6 alcohol, tobacco, and firearms.    The department of licensing shall  
7 verify that all dealers on the list provided by the bureau of alcohol,  
8 tobacco, and firearms are licensed and registered as required by RCW  
9 9.41.100.

10       (2) At least once every twelve months, the department of licensing  
11 shall obtain from the department of revenue a list of dealers  
12 registered with the department of revenue whose gross proceeds of sales  
13 are below the reporting threshold provided in RCW 82.04.300, and a list  
14 of dealers whose names and addresses were forwarded to the department  
15 of revenue by the department of licensing under RCW 9.41.110, who  
16 failed to register with the department of revenue as required by RCW  
17 9.41.100.

18       (3) At least once every twelve months, the department of licensing  
19 shall notify the bureau of alcohol, tobacco, and firearms of any  
20 federally licensed dealer with business premises in the state of  
21 Washington:    (a) Who is not licensed or not registered as required by  
22 RCW 9.41.100; or (b) whose gross proceeds of sales are below the  
23 reporting threshold provided in RCW 82.04.300.

24       **Sec. 8.**    RCW 82.04.300 and 1993 sp.s. c 25 s 205 are each amended  
25 to read as follows:

26       This chapter shall apply to any person engaging in any business  
27 activity taxable under RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255,  
28 82.04.260, 82.04.270, 82.04.280, and 82.04.290 other than those whose  
29 value of products, gross proceeds of sales, or gross income of the  
30 business is less than one thousand dollars per month:    PROVIDED, That  
31 where one person engages in more than one business activity and the  
32 combined measures of the tax applicable to such businesses equal or  
33 exceed one thousand dollars per month, no exemption or deduction from  
34 the amount of tax is allowed by this section.

35       A person who is a dealer as defined by RCW 9.41.010 is required to  
36 file returns even though no tax may be due.    Any other person claiming  
37 exemption under the provisions of this section may be required,  
38 according to rules adopted by the department, to file returns even

1 though no tax may be due. The department of revenue may allow  
2 exemptions, by general rule or regulation, in those instances in which  
3 quarterly, semiannual, or annual returns are permitted. Exemptions for  
4 such periods shall be equivalent in amount to the total of exemptions  
5 for each month of a reporting period.

6 **Sec. 9.** RCW 82.32.030 and 1992 c 206 s 8 are each amended to read  
7 as follows:

8 (1) Except as provided in subsection (2) of this section, if any  
9 person engages in any business or performs any act upon which a tax is  
10 imposed by the preceding chapters, he or she shall, under such rules as  
11 the department of revenue shall prescribe, apply for and obtain from  
12 the department a registration certificate upon payment of fifteen  
13 dollars. Such registration certificate shall be personal and  
14 nontransferable and shall be valid as long as the taxpayer continues in  
15 business and pays the tax accrued to the state. In case business is  
16 transacted at two or more separate places by one taxpayer, a separate  
17 registration certificate for each place at which business is transacted  
18 with the public shall be required, but, for such additional  
19 certificates no additional payment shall be required. Each certificate  
20 shall be numbered and shall show the name, residence, and place and  
21 character of business of the taxpayer and such other information as the  
22 department of revenue deems necessary and shall be posted in a  
23 conspicuous place at the place of business for which it is issued.  
24 Where a place of business of the taxpayer is changed, the taxpayer must  
25 return to the department the existing certificate, and a new  
26 certificate will be issued for the new place of business free of  
27 charge. No person required to be registered under this section shall  
28 engage in any business taxable hereunder without first being so  
29 registered. The department, by rule, may provide for the issuance of  
30 certificates of registration, without requiring payment, to temporary  
31 places of business or to persons who are exempt from tax under RCW  
32 82.04.300.

33 (2) Unless the person is a dealer as defined in RCW 9.41.010,  
34 registration under this section is not required if the following  
35 conditions are met:

36 (a) A person's value of products, gross proceeds of sales, or gross  
37 income of the business is below the tax reporting threshold provided in  
38 RCW 82.04.300;

1           (b) The person is not required to collect or pay to the department  
2 of revenue any other tax which the department is authorized to collect;  
3 and

4           (c) The person is not otherwise required to obtain a license  
5 subject to the master application procedure provided in chapter 19.02  
6 RCW.

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