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**HOUSE BILL 2164**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Shea, Blake, Rodne, Takko, Young, Scott, Manweller, Dent, Muri, Klippert, Haler, Holy, G. Hunt, Wilson, Fagan, McCaslin, Johnson, Griffey, Buys, Wilcox, Hargrove, Schmick, Parker, Stokesbary, Kristiansen, Nealey, MacEwen, Kretz, Smith, Harmsworth, DeBolt, Magendanz, Vick, Walsh, Kochmar, McCabe, Van Werven, Chandler, Condotta, Harris, Orcutt, Caldier, Hayes, and Pike

AN ACT Relating to revising background check requirements for sales and transfers of firearms, including exempting from the background check provisions of RCW 9.41.113 transfers of firearms involving persons who are not otherwise disqualified from legally possessing a firearm and that are: Between and among owners of a firearm and persons who have obtained a temporary restraining order, protection order, or no-contact order involving domestic violence, sexual assault, stalking, or harassment; between and among persons who are active members of the armed forces of the United States or the national guard or veterans who have been honorably discharged from military service; between and among persons who are active members of the armed forces of the United States or the national guard and family members or friends for the purpose of maintaining the members' firearms while the members are under orders for deployment; between and among persons participating in an honor guard for a funeral or flag ceremony who are associated with an organization such as the American legion, American veterans, veterans of foreign wars, wounded warrior project, and boy scouts of America, or other such organizations; between and among law enforcement officers who are otherwise not on duty acting within the course and scope of their employment or official duties; between and among corrections officers who are otherwise not on duty acting within the course and scope of their employment or official duties; between and among first responders, including public safety, fire, and emergency medical staff who are designated or trained to respond immediately to the scene of an emergency, accident, or incident in order to provide assistance, save lives, or protect property; between and among persons who are licensed private security guards, armed private security guards, bail bond agents, bail bond recovery agents, or registered process servers; between and among owners, executives, employees, and customers of businesses engaged in the manufacture, repair, renovation, modification, alteration, or engraving of firearms or firearm parts, or firearm-related accessories; between and among certified, licensed, or recognized firearm training or safety instructors and students participating in the firearm training or safety class; between and among certified, licensed, or recognized hunter education training course instructors and students participating in the hunter education training course; between and among persons who hold a valid hunting license during a recognized hunting season or while legally hunting; between and among persons at a recognized or otherwise legal military, law enforcement, commercial, or other public or private shooting range facility; between and among persons loaning, giving, or receiving firearms that are curios, relics, or antiques, or have otherwise been made completely inoperable; between and among persons who own firearms and persons who represent historical societies or museums; between and among representatives of a firearm or hunter organization while preparing for an organization event that includes a raffle or auction and between and among representatives of the organization and persons who are attending the event; between and among the owner of a firearm and other persons who remain in the immediate presence of the firearm owner and the firearm is retained by the owner once the other persons have departed from the immediate presence of the firearm owner; between and among immediate family members; and between and among persons who possess a valid concealed pistol license; exempting the transfer of a firearm that is gifted from a deceased person to a beneficiary including a widow, child, or other immediate family member, friend, or other beneficiary and who are not otherwise disqualified from possessing a firearm; prohibiting a state or local registry or database of information provided by persons involved in the transfer of a firearm between two persons who are not federal firearms licensees; clarifying that Initiative Measure No. 594 sales or transfers between two persons who are not federal firearms licensees are exempt from the use tax as well as the sales tax; and clarifying that the term transfer means the conveyance of a firearm from a person to another person with the intent of both parties to the conveyance that the transferee assumes all rights of possession, ownership, and control of the firearm and the transferor loses all rights of possession, ownership, and control of the firearm; amending RCW 9.41.113; creating a new section; and declaring an emergency.

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

NEW SECTION. **Sec.**  LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds that reasonable restrictions imposed on the possession and use of firearms are essential to maintaining public safety. The legislature further finds that most people in Washington state strive in good faith to comply with the law, but when laws become so overreaching, so intrusive, and so intransigent in the normal affairs of law-abiding citizens, when persons with criminal intent feel no duty to obey such laws but simply ignore them, then government has a duty to provide relief from the heavy burdens such laws impose on people of good will.

(2) The legislature intends that the transfers of firearms protected by this act involve only those persons who are not disqualified from legally possessing a firearm, otherwise the protections of this act do not apply.

(3) The legislature recognizes that (a) the United States Constitution, amendment II (bill of rights), guarantees that "...the right of the people to keep and bear arms, shall not be infringed" and (b) the Washington state Constitution, Article I (declaration of rights), section 24 (right to bear arms), guarantees that "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired..."

(4) The legislature finds that the federal and state Constitutions expressly recognize and protect the fundamental right to bear arms by law-abiding citizens and that certain regulations imposed by governments can place an undue burden on that right.

(5) The legislature finds that when an explicit fundamental constitutional right, such as the right to bear arms, is infringed the only burdens imposed by government that can pass constitutional muster are those that are narrowly tailored and the least restrictive means in effectively achieving a compelling government interest. The legislature further finds that certain restrictions imposed under RCW 9.41.113 do not pass strict scrutiny and that the burdens imposed on persons who otherwise are not prohibited from possessing a firearm are unsustainable.

**Sec.**  RCW 9.41.113 and 2015 c 1 s 3 (Initiative Measure No. 594) are each amended to read as follows:

(1) All firearm sales or transfers, in whole or part in this state including without limitation a sale or transfer where either the purchaser or seller or transferee or transferor is in Washington, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, and between unlicensed persons.

(2) No person shall sell or transfer a firearm unless:

(a) The person is a licensed dealer;

(b) The purchaser or transferee is a licensed dealer; or

(c) The requirements of subsection (3) of this section are met.

(3) Where neither party to a prospective firearms transaction is a licensed dealer, the parties to the transaction shall complete the sale or transfer through a licensed dealer as follows:

(a) The seller or transferor shall deliver the firearm to a licensed dealer to process the sale or transfer as if it is selling or transferring the firearm from its inventory to the purchaser or transferee, except that the unlicensed seller or transferor may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed dealer and the seller or transferor shall again deliver the firearm to the licensed dealer prior to completing the sale or transfer.

(b) Except as provided in (a) of this subsection, the licensed dealer shall comply with all requirements of federal and state law that would apply if the licensed dealer were selling or transferring the firearm from its inventory to the purchaser or transferee, including but not limited to conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements and fulfilling all federal and state recordkeeping requirements, except as provided in subsection (7) of this section.

(c) The purchaser or transferee must complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed dealer conducting the background check.

(d) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed dealer shall return the firearm to the seller or transferor.

(e) The licensed dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed dealer for facilitating the sale or transfer of the firearm.

(4) This section does not apply to:

(a) ((~~A transfer between immediate family members, which for this subsection shall be limited to spouses, domestic partners, parents, children, siblings, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles, that is a bona fide gift;~~

~~(b) The sale or transfer of an antique firearm;~~

~~(c)~~)) A temporary transfer of possession of a firearm if such transfer is necessary to prevent imminent death or great bodily harm to the person to whom the firearm is transferred if:

(i) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or great bodily harm; and

(ii) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

((~~(d)~~)) (b) Any law enforcement or corrections agency and, to the extent the person is acting within the course and scope of his or her employment or official duties, any law enforcement or corrections officer, United States marshal, member of the armed forces of the United States or the national guard, or federal official;

((~~(e)~~)) (c) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith; or

((~~(f)~~)) (d) The temporary transfer of a firearm (i) between spouses or domestic partners; (ii) if the temporary transfer occurs, and the firearm is kept at all times, at an established shooting range authorized by the governing body of the jurisdiction in which such range is located; (iii) if the temporary transfer occurs and the transferee's possession of the firearm is exclusively at a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; (iv) to a person who is under eighteen years of age for lawful hunting, sporting, or educational purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; or (v) while hunting if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting, provided that any temporary transfer allowed by this subsection is permitted only if the person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law((~~; or~~

~~(g) A person who (i) acquired a firearm other than a pistol by operation of law upon the death of the former owner of the firearm or (ii) acquired a pistol by operation of law upon the death of the former owner of the pistol within the preceding sixty days. At the end of the sixty-day period, the person must either have lawfully transferred the pistol or must have contacted the department of licensing to notify the department that he or she has possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws~~)).

(5) This section does not apply to transfers of firearms between and among the following persons who are not otherwise disqualified from legally possessing a firearm:

(a) Owners of a firearm and persons who have obtained a temporary restraining order, protection order, or no-contact order involving domestic violence, sexual assault, stalking, or harassment;

(b) Persons who are active members of the armed forces of the United States or the national guard or veterans who have been honorably discharged from military service;

(c) Persons who are active members of the armed forces of the United States or the national guard and family members or friends for the purpose of maintaining the members' firearms while the members are under orders for deployment;

(d) Persons participating in an honor guard for a funeral or flag ceremony who are associated with an organization such as the American legion, American veterans, veterans of foreign wars, wounded warrior project, and boy scouts of America, or other such organizations;

(e) Law enforcement officers who are otherwise not on duty acting within the course and scope of their employment or official duties;

(f) Corrections officers who are otherwise not on duty acting within the course and scope of their employment or official duties;

(g) First responders, including public safety, fire, and emergency medical staff who are designated or trained to respond immediately to the scene of an emergency, accident, or incident in order to provide assistance, save lives, or protect property;

(h) Persons who are licensed private security guards, armed private security guards, bail bond agents, bail bond recovery agents, or registered process servers;

(i) Owners, executives, employees, and customers of businesses engaged in the manufacture, repair, renovation, modification, alteration, or engraving of firearms or firearm parts, or firearm-related accessories;

(j) Certified, licensed, or recognized firearm training or safety instructors and students participating in the firearm training or safety class;

(k) Certified, licensed, or recognized hunter education training course instructors and students participating in the hunter education training course;

(l) Persons who hold a valid hunting license during a recognized hunting season or while legally hunting;

(m) Persons at a recognized or otherwise legal military, law enforcement, commercial, or other public or private shooting range facility;

(n) Persons loaning, giving, or receiving firearms that are curios, relics, or antiques, or have otherwise been made completely inoperable;

(o) Persons who own firearms and persons who represent historical societies or museums;

(p) Representatives of a firearm or hunter organization while preparing for an organization event that includes a raffle or auction and between and among representatives of the organization and persons who are attending the event;

(q) The owner of a firearm and other persons who remain in the immediate presence of the firearm owner and the firearm is retained by the owner once the other persons have departed from the immediate presence of the firearm owner;

(r) Immediate family members; and

(s) Persons who possess a valid concealed pistol license.

(6) This section does not apply to the transfer of a firearm that is gifted from a deceased person to a beneficiary including a widow, child, or other immediate family member, friend, or other beneficiary and who is not otherwise disqualified from possessing a firearm.

(7) No state or local government entity may maintain a registry or database of information provided by persons involved in the transfer of a firearm between two persons who are not federal firearms licensees. Notwithstanding the provisions of RCW 9.41.110(9)(b), a dealer shall not transfer a record of a pistol transfer application or a pistol transfer to the department of licensing. Notwithstanding the provisions of RCW 9.41.129, the department of licensing is prohibited from maintaining records of pistol transfers and pistol transfer applications for pistol sales or transfers conducted under subsection (3) of this section.

(8) Chapter 1, Laws of 2015 (Initiative Measure No. 594) sales or transfers between two persons who are not federal firearms licensees are exempt from the use tax as well as the sales tax. The use tax imposed under the provisions of chapter 82.12 RCW shall not apply in respect to the use of a firearm sold or transferred between two persons who are not federal firearms licensees if they have complied with all background check requirements of this chapter.

(9) For the purposes of this section, the term "transfer" means the conveyance of a firearm from a person to another person with the intent of both parties to the conveyance that the transferee assumes all rights of possession, ownership, and control of the firearm and the transferor loses all rights of possession, ownership, and control of the firearm.

NEW SECTION. **Sec.**  SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  EMERGENCY. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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