

HOUSE BILL REPORT

ESHB 2118

As Amended by the Senate

Title: An act relating to protecting the public from gun violence by establishing additional requirements for the business operations of licensed firearms dealers.

Brief Description: Protecting the public from gun violence by establishing additional requirements for the business operations of licensed firearms dealers.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Walen, Berry, Senn, Reed, Ormsby, Ramel, Peterson, Macri, Farivar, Doglio, Wylie, Reeves, Hackney, Pollet, Kloba and Davis).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/16/24, 1/19/24 [DPS].

Floor Activity:

Passed House: 2/12/24, 57-40.

Senate Amended.

Passed Senate: 2/27/24, 28-21.

Brief Summary of Engrossed Substitute Bill

- Requires firearm dealer employees to be 21 or older, to undergo fingerprinting and a background check prior to selling or transferring any firearms, and to undergo a background check each year thereafter.
- Requires dealers to adopt specified security features, alarm systems, safe storage practices, surveillance systems, and record keeping practices.
- Requires dealers to review and respond to trace requests within 24 hours; notify law enforcement of any loss, theft, or unlawful transfer within 24 hours; and provide an annual report to the Attorney General.
- Requires dealers to carry a general liability insurance policy providing at least \$1 million in coverage per incident.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires dealers to certify compliance with each licensing requirement in writing and under penalty of perjury.
- Exempts dealers with average monthly sales volume of \$1,000 or less from most requirements.
- Authorizes any law enforcement agency acting within the scope of its jurisdiction to investigate any breach of licensing conditions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno.

Minority Report: Without recommendation. Signed by 1 member: Representative Cheney.

Staff: John Burzynski (786-7133).

Background:

Dealer Licenses Generally.

Washington regulates the licensing and conduct of firearms dealers. A "dealer" is a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license. Federal law provides that no person may engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until they file an application with and receive a license from the Attorney General of the United States. In Washington, a person who does not have, and is not required to have, a federal firearms license is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

Dealers must be licensed and registered, and no dealer may sell or transfer any firearm or ammunition without being licensed. The licensing authorities of each city, town, and political subdivision of the state are required to provide a firearms dealer license that is effective for up to one year from the date of issue. Licensing authorities are required to grant or deny a firearm dealer license within 30 days after the filing of an application, unless the applicant does not have a valid permanent Washington driver's license or state identification card, or has not been a resident of the state for the previous 90 days, in which case the licensing authority has 60 days to grant or deny the license.

To obtain a state firearm dealer license, an applicant must first receive a federal firearms license and undergo fingerprinting and a background check. No person ineligible to possess a firearm or obtain a concealed pistol license under state law may qualify for a dealer's license.

The dealer license fee for pistols, other firearms, and ammunition is \$125. Once a dealer obtains one of these licenses, they may obtain the remaining licenses without payment of a fee. Dealer license fees are deposited in the State General Fund.

Dealer licenses are general licenses covering all sales by the licensee within the effective period of the license. The Washington State Department of Licensing is required to provide a single form for dealer license applications and licenses. Cities, towns, and political subdivisions of the state are generally prohibited from requiring a dealer to secure an individual permit for each sale.

State law establishes a number of conditions on dealer licenses. If a licensee breaches any of these conditions, the license is forfeit and the licensee subject to punishment.

Dealer Employees.

Dealers must require each employee who may sell firearms to undergo fingerprinting and a background check. Employees must be eligible to possess a firearm, and must not have been convicted of a crime that would make the employee ineligible for a concealed pistol license. Each employee must comply with all requirements on purchase applications and restrictions on delivery of firearms that are applicable to dealers.

Dealer Business Location.

Dealers must generally conduct business in the building designated in the dealer's license, except when conducting business at a temporary location within Washington that is also the location of a qualifying gun show. Dealers conducting business at a temporary location must nonetheless comply with all other dealer requirements. Dealers may not conduct business in a motorized or towed vehicle.

Dealer License Display.

Each dealer must display their license or a copy of their license, certified by the issuing authority, on their business premises in the area where firearms are sold, or at the temporary location, where it can easily be read.

Dealer Firearm Sales.

Firearms may not be sold in violation of any provision of the chapter of state law regulating firearms, and may not be sold to any person unless the purchaser is personally known to the dealer or presents clear evidence of their identity.

A dealer who sells or delivers a firearm to a person who is ineligible to possess a firearm

under state law is guilty of a class C felony, and subject to mandatory permanent revocation of their dealer's license and permanent ineligibility for a dealer's license.

Dealer Record Keeping.

Dealers must make a true record of every pistol or semiautomatic assault rifle sold in a book kept for record keeping purposes, which must be personally signed by the purchaser and person making the sale in the presence of each other. Each entry must note the date of sale; the caliber, make, model, and manufacturer's number of the weapon; the name, address, occupation, and place of birth of the purchaser; and a statement signed by the purchaser that they are not ineligible under state or federal law to possess a firearm. The dealer must retain the transfer record for six years.

Dealers must transmit the information from the firearm transfer application to the Washington State Patrol firearms background check program. The original application must be retained by the dealer for six years.

Violations of State Firearms Laws.

Any violation of any provision of the chapter of state law regulating firearms constitutes a misdemeanor, except as otherwise provided.

False Swearing.

A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law. False swearing is punishable as a gross misdemeanor.

For the purpose of the false swearing statute, an "oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated. Written statements are treated as if made under oath when, among other conditions, the statement was made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or when a statement, declaration, verification, or certificate, is declared to be true under penalty of perjury as provided in the Uniform Unsworn Declarations Act.

Summary of Engrossed Substitute Bill:

Dealer Employees.

Dealers must require each employee who may sell firearms to undergo fingerprinting and a background check prior to selling or transferring any firearms, and to undergo a background check annually thereafter. Dealer employees must be 21 years of age or older.

Dealer Business Security.

Dealer business locations must be secured with the following features:

- bars or grates, security screens, or commercial grade metal doors that are designed to prevent unauthorized entry and which must be installed on each exterior door and

- window; and
- a security alarm system that is properly installed and maintained in good condition; monitored by a remote central station that can contact law enforcement; capable of real-time monitoring of exterior doors and windows, and firearm storage areas; and equipped with detectors that can perceive entry, motion, and sound.

It is not a violation if any security feature or system becomes temporarily inoperable through no fault of the dealer.

Dealer Firearm Storage.

During business hours, dealers must secure each firearm in a manner that prevents a customer or other member of the public from accessing or using the firearm, except when the firearm is being shown to a customer, repaired, or worked on. Locked containers and display cases satisfy this requirement.

Outside business hours, firearms must be secured: (1) on the dealer's business premises in a locked fireproof safe or vault; (2) in a room or building that meets the physical security requirements for firearm dealer business locations; or (3) in a secured and locked area under the dealer's control while the dealer is conducting business at a temporary location.

Dealer Business Surveillance.

Dealers must ensure their business location is monitored by a digital video surveillance system that:

- can clearly record images and, inside the premises, audio;
- has cameras permanently mounted in a fixed location that can clearly record activity in all areas where video monitoring is required and reasonably produce recordings that allow for the clear identification of any person;
- monitors: (1) interior views of all exterior doors, windows, and any other entries or exits; (2) all areas where firearms are displayed; and (3) all points of sale, sufficient to identify the parties involved in the transaction;
- is capable of recording 24 hours per day at a frame rate of no less than 15 frames per second, and which either continuously records or uses motion sensors to activate recording, subject to the requirement that motion-activated recording must remain active for at least 15 seconds after motion ceases to be detected;
- stores recordings in a manner to protect the recording from tampering, unauthorized access or use, or theft;
- maintains recordings of areas where firearms are displayed and points of sale for a minimum of two years, and maintains recordings of interior views of exterior doors, windows, and any other entries or exits for a minimum of 45 days;
- records images that clearly and accurately display the date and time; and
- provides notice to the licensee of any interruption or failure of the surveillance system or recording storage.

Dealers are prohibited from sharing, allowing access to, or otherwise releasing surveillance

recordings, except to:

- any person pursuant to a search warrant or court order; and
- any person in response to an insurance claim or as part of the civil discovery process.

Dealers must post a sign at each entrance to the premises stating, "THESE PREMISES ARE UNDER VIDEO AND AUDIO SURVEILLANCE. YOUR IMAGE AND CONVERSATIONS MAY BE RECORDED."

Local authorities and governing bodies may adopt or enforce local laws or policies regarding video surveillance that do not contradict or conflict with these requirements.

It is not a violation if the surveillance system becomes temporarily inoperable through no fault of the dealer.

Dealers and Law Enforcement.

Dealers must:

- promptly review and respond to all requests from law enforcement agencies and officers, including trace requests and requests for documents and records, as soon as practicably possible and no later than 24 hours after learning of the request;
- promptly notify local law enforcement agencies and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of any loss, theft, or unlawful transfer of any firearm or ammunition as soon as practicably possible and no later than 24 hours after the dealer knows or should know of the reportable event; and
- provide an annual report to the Washington Attorney General regarding the total number of trace requests received; the make and model of the firearm at issue in each trace request; and whether the dealer was inspected by the ATF and copies of any reports of violations or letters received from the ATF. The Attorney General is authorized to create, publish, and require firearm dealers to file a uniform form for all annual dealer reports.

Dealer Record Keeping.

Dealers must:

- establish and maintain a book, or electronic record, of purchase, sale, inventory, and other records, at the dealer's place of business, which must include at minimum the make, model, caliber or gauge, manufacturer's name, and serial number of all firearms acquired or disposed of not later than one business day after their acquisition or disposition, and dealers must make all such records available to law enforcement upon request;
- maintain monthly backups of the above records in a secure container designed to prevent loss by fire, theft, or flood, or, if electronic, they must be backed up on an external server or over the internet at the close of each business day;
- account for all firearms acquired but not yet disposed of through an inventory check prepared each month and maintained in a secure location;
- maintain and make available at any time to government law enforcement agencies

and to the manufacturer of the weapon or its designee, firearm disposition information, including the serial numbers of firearms sold, dates of sale, and identity of purchasers;

- retain all ATF form 4473 transaction records on the premises in a secure container designed to prevent loss by fire, theft, or flood; and
- maintain for six years copies of trace requests received, including notations for trace requests received by phone.

Dealer Insurance.

Dealers must carry a general liability insurance policy providing at least \$1 million of coverage per incident.

Dealer Certification.

As a condition of licensure, dealers must certify to their licensing authority, in writing and under penalty of perjury, that the dealer complies with each license requirement.

Dealer Exemption.

Dealers with average sales volume of \$1,000 or less per month are exempt from the requirement of certification of compliance to licensing authorities, and implementation of required security features, firearm storage practices, surveillance systems, law enforcement response and reporting practices, recordkeeping requirements, and insurance minimums. A dealer that previously operated under this threshold and subsequently exceeds it must comply with all requirements within one year of exceeding the threshold.

Enforcement.

Law enforcement agencies acting within the scope of their jurisdiction are authorized to investigate any breach of the licensing conditions established in the chapter of state law regulating firearms.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment requires firearm dealers to maintain surveillance recordings for a minimum of 90 days for recordings of areas where firearms are displayed and points of sale, instead of two years.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2025.

Staff Summary of Public Testimony:

(In support) The goal of this bill is to make sure inventory is kept safe and secure,

standardized records are kept, loss and theft are timely reported, video recordings of transactions are kept, and liability insurance is carried. The bill requires gun dealers to secure their business premises, secure their inventory of deadly weapons, maintain good records of their inventory and transactions, and promptly review and respond to law enforcement requests seeking information about guns used in crimes. All of these steps are either tools to prevent guns from moving into illegal markets or tools to support law enforcement investigations and interventions into straw purchasing and gun trafficking.

Passing this bill will clearly enumerate responsibilities of gun dealers and keep communities safe. The bill will help ensure firearms do not slip into the illegal gun market where people who cannot pass a background check could get easy access to them, and will prevent guns from ending up in the hands of prohibited purchasers and gun traffickers. It will also help gun dealers engage in safe business practices by providing industry standards and standardized training.

There are 822 Washingtonians killed by gun violence each year. Family members have been killed by firearms. In 2021 over 10,000 guns were reported lost by or stolen from gun shops in the United States and at least 28 guns per day are potentially moving into illegal markets. A survey of federally licensed firearms dealers estimated there are between 28,500 and 43,600 attempted straw purchases each year. A study of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) gun trafficking investigations found illegal or grossly negligent practices by retail firearm dealers accounted for more guns diverted into the illegal market than any other single trafficking channel.

There are currently no requirements under federal law for dealers to maintain minimum security standards or engage in safe business practices. The ATF can only inspect 5 percent of dealers each year and federal oversight is minimal. Bureau of Alcohol, Tobacco, Firearms and Explosives compliance inspections commonly reveal many firearms for which dealers cannot account. Weak federal laws and the resource constraints of the ATF limit their ability to ensure gun dealers comply with gun laws. Some dealers and their employees may be taking firearms from inventory and selling them off the books to traffickers and criminals. Communities have no guarantee firearm dealers are adhering to best practices. By creating reasonable lifesaving standards for the conduct of gun dealers, this bill can fill the gaps.

Gun dealers are gatekeepers and have an effect on whether guns are diverted into illegal markets or towards individuals at risk of harming themselves or others. Firearm dealers should be held to a high standard.

(Opposed) Firearm dealers share this bill's goals. They want to make sure inventory is protected, prevent unauthorized access to firearms from occurring, have liability insurance in place, and make sure firearms are not stolen from dealers and diverted into crime. This bill is a solution in search of a problem. Out of all the firearm thefts in the United States each year, few come from federally licensed dealers. Allegations that dealers do not take

their responsibilities seriously or are negligent are wrong. It is impossible to operate as a dealer long term without being 100 percent in compliance with the law. This bill sends the message to firearm retailers that they are not trusted to keep firearms out of the hands of criminals.

Dealers are already highly regulated and are subject to thousands of federal and state regulations. The ATF can essentially revoke a dealer's license at any point in time, and violators already face fines and prison terms of up to 25 years. The stakes of compliance are already very high. Dealers are already subject to mandatory reporting requirements under federal law. The ATF is a great partner and dealers already work with the ATF closely. Conflicts between state and federal law place dealers in a legal limbo.

Dealers already deploy security measures like bollards, barred windows and doors, treated glass panes, 24/7 security systems with motion detectors and glass break sensors, outdoor lighting, occupancy limits, and other systems. Dealer building security measures meet or exceed this bill's requirements. Dealers already train their staff to ensure legal transactions occur and identify straw purchasers. Each store has unique needs and a one-size-fits-all solution will not work.

Dealers are already insured, and insurance underwriters already require yearly reviews of entrances, display cases, storage rooms, access points, and opening and closing procedures. Insurers require dealers to meet or exceed industry standards to obtain insurance, and dealers do not operate without insurance.

This bill's requirements are cost prohibitive and will force dealers out of business. The burdens in time, manpower, and money will crush even the largest dealers. The bill ignores security measures that are already in place and will force dealers to spend resources on ineffective measures. The expenses imposed by the bill are unreasonable for companies whose buildings are already essentially concrete boxes. This bill will destroy hundreds of small businesses across the state. One testifier stated a typical 2,000 to 3,000 square foot store that needed 12 cameras would need over 4,000 terabytes of data storage for 6 years of video recordings, and the cost over 5 years would be \$3.3 million per store. Another testifier estimated upgrade costs for their store of \$700,000 initially, increased rent space that would triple overhead, and maintenance costs of \$350,000. Another testifier stated the bill would require them to purchase more than 100 fireproof safes to store firearms overnight and incur costs of approximately \$280,000 for security system work to meet the bill's standards.

Other industries like cannabis and pharmacies are not subject to regulations similar to those required by this bill. Drug overdoses are responsible for eight times more deaths than firearms in Washington but, just as pharmacies are not the problem, neither are firearms dealers. Our problems are caused by us, not firearms. Guns are simply a tool. People are in pain, feel despair, and need help. We must look at ourselves and change the behaviors that lead to death and destruction.

The intent of this bill is not to regulate or help dealers or reduce crime, but rather to put dealers out of business and end gun sales in Washington.

New firearm laws recently went into effect. The Legislature should wait and see how those laws play out before adding new rules.

Persons Testifying: (In support) Representative Amy Walen, prime sponsor; Betty Taylor, Ezra's Hands; Robert Schentrup, Brady; Ian Taylor; Krystal LoPilato, Everytown for Gun Safety; and Dr. Daniel Webster, Hopkins Center for Gun Violence Solutions.

(Opposed) Michael Findlay, National Shooting Sports Foundation; Hiedi Lee, Sporting Systems; Austin Harlan, The Range Limited Liability Company; Wade Gaughran, Eastside Guns; and Jeremy Ball, Sharp Shooting Indoor Range and Gun Shop.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.