

SHB 1588 - H AMD 282

By Representative Pedersen

NOT CONSIDERED

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that there is broad
4 consensus that certain people, such as felons, minors, and
5 involuntarily committed persons, should not be eligible to possess
6 firearms for public safety reasons. Background checks are an effective
7 and easy mechanism to ensure that firearms are not sold to those who
8 are prohibited from possessing them. However, because background check
9 requirements apply only to transfers by licensed firearms dealers, many
10 firearms are currently sold without a background check, allowing felons
11 and other ineligible persons to gain access to them. The legislature
12 intends by this act to strengthen our background check system by
13 broadening the requirement for a background check to apply to all
14 firearms sales in the state.

15 **Sec. 2.** RCW 9.41.080 and 1994 sp.s. c 7 s 409 are each amended to
16 read as follows:

17 (1) No person may deliver a firearm to any person whom he or she
18 has reasonable cause to believe is ineligible under ((RCW 9.41.040))
19 state or federal law to possess a firearm. Any person violating this
20 ((section)) subsection is guilty of a class C felony, punishable under
21 chapter 9A.20 RCW.

22 (2)(a) No unlicensed person may sell a firearm to another
23 unlicensed person unless: (i) The purchaser produces a valid concealed
24 pistol license issued under RCW 9.41.070; (ii) the purchaser produces
25 a valid background check certificate issued under subsection (3) of
26 this section; (iii) the purchaser produces a valid Washington law
27 enforcement officer commission card or credentials indicating the
28 person is an active full-time commissioned Washington law enforcement
29 officer; or (iv) the transaction is conducted through a dealer.

1 (b) If the purchaser produces a valid concealed pistol license
2 issued under RCW 9.41.070, a valid background check certificate issued
3 under subsection (3) of this section, or a valid Washington law
4 enforcement officer commission card or credentials, the seller shall
5 retain a copy of the concealed pistol license, background check
6 certificate, or law enforcement officer commission card or credentials
7 as proof of compliance with the requirements of this subsection (2).

8 (c) If the seller and purchaser conduct the firearm sale through a
9 dealer, the dealer must conduct a check of the national instant
10 criminal background check system in accordance with federal law, but is
11 not required to comply with any of the requirements of RCW 9.41.090 or
12 9.41.110(9) relating to the transfer of firearms by dealers.

13 (d) An unlicensed person who sells a firearm to another unlicensed
14 person in violation of this subsection (2) is guilty of a gross
15 misdemeanor punishable under chapter 9A.20 RCW.

16 (e) For the purposes of this subsection (2), "unlicensed person"
17 means any person who is not licensed as a dealer under this chapter or
18 federally licensed as a collector under 18 U.S.C. Sec. 923(b).

19 (f) This subsection (2) does not apply to: (i) The sale of an
20 antique firearm; or (ii) the gift or loan of a firearm.

21 (g) This subsection (2) does not apply to, and is not intended to
22 alter the requirements of this chapter that apply to, the sale of a
23 firearm by a dealer licensed under this chapter.

24 (3)(a) A person may obtain a background check certificate from any
25 local law enforcement agency in the state. An application for a
26 background check certificate must include the applicant's full name,
27 residential address, and date and place of birth. At the time of
28 application, the local law enforcement agency shall verify the
29 applicant's identity by examining the applicant's driver's license or
30 identification card, or other picture identification.

31 (b) The local law enforcement agency shall issue a background check
32 certificate to the applicant if:

33 (i) The local law enforcement agency has conducted a background
34 check of the applicant through the national instant criminal background
35 check system, and the results of the background check do not indicate
36 that the applicant is ineligible to possess a firearm under state or
37 federal law; or

1 (ii) If the local law enforcement agency is not authorized by
2 federal law to conduct a check through the national instant criminal
3 background check system, the local law enforcement agency has conducted
4 a background check of the applicant through the Washington state patrol
5 electronic database and the department of licensing, and the results of
6 the background check do not indicate that the purchaser is ineligible
7 to possess a firearm under state or federal law; or

8 (iii) Three business days have elapsed since the local law
9 enforcement agency initiated the background check under this subsection
10 (3)(b) and the local law enforcement agency has not been notified that
11 possession of a firearm by the applicant would violate state or federal
12 law.

13 (c) If the local law enforcement agency denies the background check
14 certificate because the background check indicates that the applicant
15 is ineligible to possess a firearm under state or federal law, the
16 local law enforcement agency shall indicate on the application the
17 national instant criminal background check system transaction number,
18 or in the case of a state background check, indicate on the application
19 the reason for the denial.

20 (d) A background check certificate is valid for thirty days from
21 the date the certificate is issued by the local law enforcement agency.

22 (e) The local law enforcement agency may charge a fee of up to
23 twenty dollars for issuing a background check certificate. The local
24 law enforcement agency shall not retain any records of applications or
25 background check certificates issued under this section.

26 (f) The Washington association of sheriffs and police chiefs shall
27 develop a standard background check certificate for use by local law
28 enforcement agencies.

29 **Sec. 3.** RCW 82.12.040 and 2011 1st sp.s. c 20 s 103 are each
30 amended to read as follows:

31 (1) Every person who maintains in this state a place of business or
32 a stock of goods, or engages in business activities within this state,
33 shall obtain from the department a certificate of registration, and
34 shall, at the time of making sales of tangible personal property,
35 digital goods, digital codes, digital automated services, extended
36 warranties, or sales of any service defined as a retail sale in RCW
37 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of

1 either possession or title, or both, of tangible personal property for
2 use in this state, collect from the purchasers or transferees the tax
3 imposed under this chapter. The tax to be collected under this section
4 must be in an amount equal to the purchase price multiplied by the rate
5 in effect for the retail sales tax under RCW 82.08.020. For the
6 purposes of this chapter, the phrase "maintains in this state a place
7 of business" shall include the solicitation of sales and/or taking of
8 orders by sales agents or traveling representatives. For the purposes
9 of this chapter, "engages in business activity within this state"
10 includes every activity which is sufficient under the Constitution of
11 the United States for this state to require collection of tax under
12 this chapter. The department must in rules specify activities which
13 constitute engaging in business activity within this state, and must
14 keep the rules current with future court interpretations of the
15 Constitution of the United States.

16 (2) Every person who engages in this state in the business of
17 acting as an independent selling agent for persons who do not hold a
18 valid certificate of registration, and who receives compensation by
19 reason of sales of tangible personal property, digital goods, digital
20 codes, digital automated services, extended warranties, or sales of any
21 service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),
22 (3)(a), or (6)(b), of his or her principals for use in this state,
23 must, at the time such sales are made, collect from the purchasers the
24 tax imposed on the purchase price under this chapter, and for that
25 purpose is deemed a retailer as defined in this chapter.

26 (3) The tax required to be collected by this chapter is deemed to
27 be held in trust by the retailer until paid to the department, and any
28 retailer who appropriates or converts the tax collected to the
29 retailer's own use or to any use other than the payment of the tax
30 provided herein to the extent that the money required to be collected
31 is not available for payment on the due date as prescribed is guilty of
32 a misdemeanor. In case any seller fails to collect the tax herein
33 imposed or having collected the tax, fails to pay the same to the
34 department in the manner prescribed, whether such failure is the result
35 of the seller's own acts or the result of acts or conditions beyond the
36 seller's control, the seller is nevertheless personally liable to the
37 state for the amount of such tax, unless the seller has taken from the
38 buyer a copy of a direct pay permit issued under RCW 82.32.087.

1 (4) Any retailer who refunds, remits, or rebates to a purchaser, or
2 transferee, either directly or indirectly, and by whatever means, all
3 or any part of the tax levied by this chapter is guilty of a
4 misdemeanor.

5 (5) Notwithstanding subsections (1) through (4) of this section,
6 any person making sales is not obligated to collect the tax imposed by
7 this chapter if:

8 (a) The person's activities in this state, whether conducted
9 directly or through another person, are limited to:

10 (i) The storage, dissemination, or display of advertising;

11 (ii) The taking of orders; or

12 (iii) The processing of payments; and

13 (b) The activities are conducted electronically via a web site on
14 a server or other computer equipment located in Washington that is not
15 owned or operated by the person making sales into this state nor owned
16 or operated by an affiliated person. "Affiliated persons" has the same
17 meaning as provided in RCW 82.04.424.

18 (6) Subsection (5) of this section expires when: (a) The United
19 States congress grants individual states the authority to impose sales
20 and use tax collection duties on remote sellers; or (b) it is
21 determined by a court of competent jurisdiction, in a judgment not
22 subject to review, that a state can impose sales and use tax collection
23 duties on remote sellers.

24 (7) Notwithstanding subsections (1) through (4) of this section,
25 any person making sales is not obligated to collect the tax imposed by
26 this chapter if the person would have been obligated to collect retail
27 sales tax on the sale absent a specific exemption provided in chapter
28 82.08 RCW, and there is no corresponding use tax exemption in this
29 chapter. Nothing in this subsection (7) may be construed as relieving
30 purchasers from liability for reporting and remitting the tax due under
31 this chapter directly to the department.

32 (8) Notwithstanding subsections (1) through (4) of this section,
33 any person making sales is not obligated to collect the tax imposed by
34 this chapter if the state is prohibited under the Constitution or laws
35 of the United States from requiring the person to collect the tax
36 imposed by this chapter.

37 (9) Notwithstanding subsections (1) through (4) of this section,

1 any firearms dealer facilitating a firearm sale between two unlicensed
2 persons under RCW 9.41.080(2) is not obligated to collect the tax
3 imposed by this chapter.

4 NEW SECTION. **Sec. 4.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected."

8 Correct the title.

EFFECT: (1) Provides that an unlicensed person may transfer a
firearm to another unlicensed person only if: (a) The purchaser
produces a valid concealed pistol license; (b) the person obtains a
background check certificate from a local law enforcement agency; (c)
the purchaser produces a Washington law enforcement agency commission
card or credentials; or (d) the transfer is conducted through a dealer.

(2) Provides an exemption for the sale of antique firearms or the
gift or loan of a firearm.

(3) Provides that if the firearm sale is conducted through a
dealer, the dealer must conduct a NICS check as required under federal
law, but is not required to comply with state background check
requirements. Removes the language specifying that the dealer may
charge a fee of no more than \$20 for facilitating the transfer.

(4) Creates a process for a person to obtain a background check
certificate, which is valid for a period of 30 days, from any local law
enforcement agency in the state. Requires a law enforcement agency to
conduct a NICS background check of the applicant or, if federal law
does not authorize the agency to conduct a NICS check, the agency must
conduct a state background check of Washington State Patrol and
Department of Licensing databases. Requires the law enforcement agency
to issue the background check certificate if the results of the
background check do not indicate that the person is ineligible to
possess a firearm and if three business days have elapsed since
initiating the check. Provides that the agency may charge a fee of up
to \$20 for issuing the certificate.

(5) Requires the seller to maintain a copy of the concealed pistol
license, law enforcement agency commission card, or background check
certificate as proof of compliance with the act.

(6) Provides that a dealer who facilitates the transfer of a
firearm between unlicensed persons is not obligated to collect a use
tax on the transaction.

(7) Provides a severability clause.

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