

# SENATE BILL REPORT

## ESHB 2118

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As of February 19, 2024

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

**Committee Activity:** Law & Justice: 2/19/24.

### Brief Summary of Bill

- Requires employees of firearm dealers to undergo yearly background checks.
- Requires firearm dealers to adopt specified security features, alarm and surveillance systems, and safe storage and record keeping practices.
- Requires firearm dealers to review and respond to trace requests within 24 hours; notify law enforcement of any loss, theft or unlawful transfer of a firearm within 24 hours; and provide an annual report to the attorney general.
- Mandates minimum insurance coverage requirements for firearm dealers.
- Authorizes law enforcement agencies to investigate breaches of dealer licensing conditions.

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### SENATE COMMITTEE ON LAW & JUSTICE

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*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.*

**Staff:** Joe McKittrick (786-7287)

**Background:** A firearms dealer (dealer) is a person engaged in the business of selling firearms at wholesale or retail who is required to have a federal firearms license. A person is not considered a dealer if the 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 their personal collection.

No dealer may sell or transfer any firearm or ammunition without being licensed. To obtain a state firearm dealer's license, an applicant must first receive a federal firearms license and undergo fingerprinting and a background check. In most circumstances, the licensing authority of each city, town, or political subdivision of the state must grant or deny a firearm dealer license within 30 days, and the license must be effective for up to one year from the date of issuance.

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

Dealers must generally conduct business in the building designated in the dealer's license except when conducting temporary business in the state at a gun show. Dealers conducting business at a temporary location must still comply with all other dealer requirements and may not conduct business in a motorized or towed vehicle. Dealers must also display a copy of their license in an easily readable area where firearms are sold at their business premises or at any temporary location.

Dealers must transmit the information collected from firearm transfer applications to the Washington State Patrol firearms background check program and must retain the original application for six years. Dealers must make a true record of every pistol or semiautomatic assault rifle sale in a book kept for record keeping purposes which must be signed by the purchaser and person making the sale. 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 maintain these records for six years.

Dealers may not sell a firearm to any person the does not personally know or who does not present clear evidence of their identity. It is a class C felony for a dealer to sell or deliver a firearm to a person who is ineligible to possess a firearm. Such a sale or delivery will also result in the permanent revocation of the dealer's license.

**Summary of Bill:** Firearms Dealer Employees. In addition to current fingerprinting and

background check requirements for employees, dealers must require employees who may sell firearms be at least 21 years old and undergo an annual background check.

Firearms Dealer Business Security. Dealers must secure the exterior doors and windows of their business locations with bars or grates, security screens, or commercial grade metal doors that are designed to prevent unauthorized entry. Dealers must also secure their business locations with a security alarm system properly installed and maintained in good condition. The alarm system must also be:

- 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.

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

- can clearly record images and, inside the business, audio;
- has cameras permanently mounted in certain locations and that can reasonably produce records that allow for clear identification of any person;
- monitors: (1) interior views of all exterior doors, windows, and any other points on ingress and egress, (2) all areas where firearms are displayed, and (3) all points of sale in a manner sufficient to identify the parties to any transaction;
- is capable of 24-hour per day recording with either continuous recording or motion activated recording;
- protects stored recordings from tampering, unauthorized access or use, and theft;
- maintains recordings of points of sale and areas where firearms are stored for a period of two years and all other required areas for a period of 45 days;
- records images that clearly and accurately display the date and time; and
- provides notice to the dealer of any interruption or failure of the system.

Dealers must share with, allow access to, or otherwise release surveillance records to any person pursuant to a search warrant or court order or in response to an insurance claim or as part of the civil discovery process. Dealers are otherwise prohibited from sharing surveillance recordings.

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

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

Dealers are not in violation of these security or surveillance requirements if any feature or system becomes temporarily inoperable through no fault of their own.

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:

- on the dealer's business premises in a locked fireproof safe or vault;
- in a room or building that meets the physical security requirements for dealer business locations; or
- in a secured and locked area under the dealer's control while the dealer is conducting business at a temporary location.

Law Enforcement. Dealers must:

- promptly review and respond to all requests from law enforcement, 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 law enforcement 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 practical and no later than 24 hours after the dealer knows or should know of the reportable event; and
- provide an annual report 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 along with 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.

Record Keeping. Dealer's 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, no later than one business day after their acquisition or disposition and must make these records available to law enforcement upon request. Dealers must also maintain monthly backups of these records in a secure container or electronically if saved on an external server or over the internet at the close of each business day.

Dealers must conduct monthly inventory checks of all firearms acquired but not yet disposed and must maintain the records in a secure location. Dealers must retain all ATF form 4473 transaction records on the premises in a secure container and must maintain trace requests, including notations for trace requests received by phone for six years.

Dealers must also maintain firearm disposition information, including the serial numbers of firearms sold, dates of sale, and identity of purchasers, and make such information available at any time to law enforcement agencies and weapons manufacturers or their designees.

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

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 all license requirements.

Exemption. dealers with average sales volume of \$1,000 or less per month are exempt from:

- the certification requirement;
- the security features requirement;
- firearm storage practices;
- surveillance system requirements;
- law enforcement response and reporting practices;
- record keeping requirements; and
- insurance minimums.

A dealer that previously operated under this dollar threshold who 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill is about keeping firearms safe, the inventory safe. It's about promptly recording incidents and it's about the ability of law enforcement to track straw purchases. The medical professions are regulated and rightly so because you don't want just anyone hanging up a shingle and handing out medications, but federal oversight of firearm dealers is minimal, so Washington communities don't have a guarantee that the dealers adhere to best practices. This bill simply requires basic measures to provide firearm safety for preventing guns getting into the wrong hands. Mandatory anti-theft features, standardized record keeping and reporting timelines for lost and stolen merchandise are sensible, necessary measures to prevent straw purchases. A study of ATF gun trafficking investigations found that illegal or grossly negligent practices by retail firearm dealers accounted for more guns diverted into the illegal market than any other single trafficking channel. This bill will require gun dealers to take steps to prevent their products from slipping into the illegal market through either theft or straw purchases. These

commonsense measures are necessary in our current environment. Research on licensed firearms dealers estimates that there are as many as 43,600 attempted straw purchases every year. In Washington and across the country, gun dealers play a critical role as gatekeepers and their conduct has a direct effect on whether or not guns are diverted into the illegal market or to individuals at risk of harming themselves or others.

CON: The cost imposed on firearm dealers by this bill, specifically the costly video retention requirements for each dealership are significantly out of proportion within a hypothetical public safety benefits the bill seeks to gain. Federal and state data clearly demonstrate that less than 2 percent of all firearm thefts in Washington State occur at firearm dealer locations. Even planning for the minimum number of cameras required when fully implemented, conservative estimates point to costs of more than \$197,000 per year for each FFL to digitally store two years' worth of camera footage. The unrealistic and draconian mandates that have zero law enforcement value and appear to have no other purpose than to put Washington FFL holders out of business. The majority of firearm dealers in Washington are small businesses and there is no conceivable way that those FFL holders will be able to comply with this bill. Given that so many FFL holders operate out of their own homes, the surveillance requirements of this bill would be an immense invasion of privacy. Requiring the extraordinary expense of years of video and illegal audio storage will do nothing to stop gun violence, just as ring cameras do nothing to deter package theft from homes. The video surveillance requirement of this bill goes beyond even what is required for the cannabis industry, a federally illegal industry. All firearms transfer in the state of Washington requires a background check, including private party transfers. The right to keep in bear arms is only secure if citizens can access firearms. This bill will drive Washington's lawful sellers of firearms out of business or out of the state. This bill will drive Washington's lawful sellers of firearms out of business or out of the state. Rather than applying logic and critical thinking to Washington's unique criminal issues, this body awkwardly plagiarizes California with another feeble virtue signal. Locking firearms up in a particular manner, having security cameras on people who purchase firearms legally with background checks that the state of Washington approves doesn't stop crime.

**Persons Testifying:** PRO: Representative Amy Walen, Prime Sponsor; Cheryl Stumbo, Everytown for Gun Safety Survivor Fellow Manager; Dr. Beth Ebel, Washington Chapter of the American Academy of Pediatrics; Dr. Daniel Webster, Johns Hopkins Center for Gun Violence Solutions; Olivia Li, Everytown for Gun Safety Legal Counsel; Betty Taylor, Ezra's Hands; Robert Schentrup, Brady.

CON: Troy Nichols, National Shooting Sports Foundation; Aoibheann Cline, NRA; Mark Crider, Walla Walla County Sheriff; Hiedi Lee, Sporting Systems/Minute Man Ammunition; Dan Mitchell, Washington Civil Rights Association; Jeremy Ball, Sharp Shooting Indoor Range & Gun Shop.

**Persons Signed In To Testify But Not Testifying:** PRO: Jane Weiss; Ann Madsen; Nancy Dombrowski, Moms Demand Action.

CON: Laurie Layne; Teo Morca; Karen Strickland, Pawn 1; Eric pratt, America; Marcus Carter, Kitsap Rifle & Revolver Club; Mark Johnson, Washington Retail Association; Anthony Mixer, Washington State Young Republicans; Robert Huntsinger; Marie Neumiller, Congressional Sportsmen's Foundation; Cristian Sanchez, Washington State Young Republicans; Daniel Allen.