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**SUBSTITUTE SENATE BILL 5552**

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**State of Washington**

**65th Legislature**

**2017 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Pedersen, Zeiger, Frockt, Takko, O'Ban, Fain, and Hobbs)

READ FIRST TIME 02/10/17.

1       AN ACT Relating to background checks for firearms sales or  
2 transfers, but only with respect to clarifying that the term firearm  
3 does not include flare guns and construction tools, clarifying that  
4 the term transfer does not include transfers between an entity and  
5 its employee or agents for lawful purposes in the ordinary course of  
6 business, defining licensed collector and curio or relic, expanding  
7 the family member exemption to include loans and parents-in-law and  
8 siblings-in-law, providing an exemption for temporary transfers for  
9 the purpose of preventing suicide or self-inflicted great bodily  
10 harm, providing an exemption for licensed collectors when the firearm  
11 is a curio or relic, and providing an exemption for temporary  
12 transfers where the transferee and the firearm are in the presence of  
13 the transferor; and amending RCW 9.41.010 and 9.41.113.

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

15       **Sec. 1.** RCW 9.41.010 and 2015 c 1 s 2 are each amended to read  
16 as follows:

17       Unless the context clearly requires otherwise, the definitions in  
18 this section apply throughout this chapter.

19       (1) "Antique firearm" means a firearm or replica of a firearm not  
20 designed or redesigned for using rim fire or conventional center fire  
21 ignition with fixed ammunition and manufactured in or before 1898,

1 including any matchlock, flintlock, percussion cap, or similar type  
2 of ignition system and also any firearm using fixed ammunition  
3 manufactured in or before 1898, for which ammunition is no longer  
4 manufactured in the United States and is not readily available in the  
5 ordinary channels of commercial trade.

6 (2) "Barrel length" means the distance from the bolt face of a  
7 closed action down the length of the axis of the bore to the crown of  
8 the muzzle, or in the case of a barrel with attachments to the end of  
9 any legal device permanently attached to the end of the muzzle.

10 (3) "Crime of violence" 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  
16 if committed by forcible compulsion, kidnapping in the second degree,  
17 arson in the second degree, assault in the second degree, assault of  
18 a child in the second degree, extortion in the first degree, burglary  
19 in the second degree, residential burglary, and robbery in the second  
20 degree;

21 (b) Any conviction for a felony offense in effect at any time  
22 prior to June 6, 1996, which is comparable to a felony classified as  
23 a crime of violence in (a) of this subsection; and

24 (c) Any federal or out-of-state conviction for an offense  
25 comparable to a felony classified as a crime of violence under (a) or  
26 (b) of this subsection.

27 (4) "Dealer" means a person engaged in the business of selling  
28 firearms at wholesale or retail who has, or is required to have, a  
29 federal firearms license under 18 U.S.C. Sec. 923(a). A person who  
30 does not have, and is not required to have, a federal firearms  
31 license under 18 U.S.C. Sec. 923(a), is not a dealer if that person  
32 makes only occasional sales, exchanges, or purchases of firearms for  
33 the enhancement of a personal collection or for a hobby, or sells all  
34 or part of his or her personal collection of firearms.

35 (5) "Family or household member" means "family" or "household  
36 member" as used in RCW 10.99.020.

37 (6) "Felony" means any felony offense under the laws of this  
38 state or any federal or out-of-state offense comparable to a felony  
39 offense under the laws of this state.

1 (7) "Felony firearm offender" means a person who has previously  
2 been convicted or found not guilty by reason of insanity in this  
3 state of any felony firearm offense. A person is not a felony firearm  
4 offender under this chapter if any and all qualifying offenses have  
5 been the subject of an expungement, pardon, annulment, certificate,  
6 or rehabilitation, or other equivalent procedure based on a finding  
7 of the rehabilitation of the person convicted or a pardon, annulment,  
8 or other equivalent procedure based on a finding of innocence.

9 (8) "Felony firearm offense" means:

10 (a) Any felony offense that is a violation of this chapter;

11 (b) A violation of RCW 9A.36.045;

12 (c) A violation of RCW 9A.56.300;

13 (d) A violation of RCW 9A.56.310;

14 (e) Any felony offense if the offender was armed with a firearm  
15 in the commission of the offense.

16 (9) "Firearm" means a weapon or device from which a projectile or  
17 projectiles may be fired by an explosive such as gunpowder. "Firearm"  
18 does not include a flare gun or other pyrotechnic visual distress  
19 signaling device, or a powder-actuated tool or other device designed  
20 solely to be used for construction purposes.

21 (10) "Gun" has the same meaning as firearm.

22 (11) "Law enforcement officer" includes a general authority  
23 Washington peace officer as defined in RCW 10.93.020, or a specially  
24 commissioned Washington peace officer as defined in RCW 10.93.020.  
25 "Law enforcement officer" also includes a limited authority  
26 Washington peace officer as defined in RCW 10.93.020 if such officer  
27 is duly authorized by his or her employer to carry a concealed  
28 pistol.

29 (12) "Lawful permanent resident" has the same meaning afforded a  
30 person "lawfully admitted for permanent residence" in 8 U.S.C. Sec.  
31 1101(a)(20).

32 (13) "Licensed dealer" means a person who is federally licensed  
33 under 18 U.S.C. Sec. 923(a).

34 (14) "Loaded" means:

35 (a) There is a cartridge in the chamber of the firearm;

36 (b) Cartridges are in a clip that is locked in place in the  
37 firearm;

38 (c) There is a cartridge in the cylinder of the firearm, if the  
39 firearm is a revolver;

1 (d) There is a cartridge in the tube or magazine that is inserted  
2 in the action; or

3 (e) There is a ball in the barrel and the firearm is capped or  
4 primed if the firearm is a muzzle loader.

5 (15) "Machine gun" means any firearm known as a machine gun,  
6 mechanical rifle, submachine gun, or any other mechanism or  
7 instrument not requiring that the trigger be pressed for each shot  
8 and having a reservoir clip, disc, drum, belt, or other separable  
9 mechanical device for storing, carrying, or supplying ammunition  
10 which can be loaded into the firearm, mechanism, or instrument, and  
11 fired therefrom at the rate of five or more shots per second.

12 (16) "Nonimmigrant alien" means a person defined as such in 8  
13 U.S.C. Sec. 1101(a)(15).

14 (17) "Person" means any individual, corporation, company,  
15 association, firm, partnership, club, organization, society, joint  
16 stock company, or other legal entity.

17 (18) "Pistol" means any firearm with a barrel less than sixteen  
18 inches in length, or is designed to be held and fired by the use of a  
19 single hand.

20 (19) "Rifle" means a weapon designed or redesigned, made or  
21 remade, and intended to be fired from the shoulder and designed or  
22 redesigned, made or remade, and intended to use the energy of the  
23 explosive in a fixed metallic cartridge to fire only a single  
24 projectile through a rifled bore for each single pull of the trigger.

25 (20) "Sale" and "sell" mean the actual approval of the delivery  
26 of a firearm in consideration of payment or promise of payment.

27 (21) "Serious offense" means any of the following felonies or a  
28 felony attempt to commit any of the following felonies, as now  
29 existing or hereafter amended:

30 (a) Any crime of violence;

31 (b) Any felony violation of the uniform controlled substances  
32 act, chapter 69.50 RCW, that is classified as a class B felony or  
33 that has a maximum term of imprisonment of at least ten years;

34 (c) Child molestation in the second degree;

35 (d) Incest when committed against a child under age fourteen;

36 (e) Indecent liberties;

37 (f) Leading organized crime;

38 (g) Promoting prostitution in the first degree;

39 (h) Rape in the third degree;

40 (i) Drive-by shooting;

1 (j) Sexual exploitation;

2 (k) Vehicular assault, when caused by the operation or driving of  
3 a vehicle by a person while under the influence of intoxicating  
4 liquor or any drug or by the operation or driving of a vehicle in a  
5 reckless manner;

6 (l) Vehicular homicide, when proximately caused by the driving of  
7 any vehicle by any person while under the influence of intoxicating  
8 liquor or any drug as defined by RCW 46.61.502, or by the operation  
9 of any vehicle in a reckless manner;

10 (m) Any other class B felony offense with a finding of sexual  
11 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

12 (n) Any other felony with a deadly weapon verdict under RCW  
13 9.94A.825;

14 (o) Any felony offense in effect at any time prior to June 6,  
15 1996, that is comparable to a serious offense, or any federal or out-  
16 of-state conviction for an offense that under the laws of this state  
17 would be a felony classified as a serious offense; or

18 (p) Any felony conviction under RCW 9.41.115.

19 (22) "Short-barreled rifle" means a rifle having one or more  
20 barrels less than sixteen inches in length and any weapon made from a  
21 rifle by any means of modification if such modified weapon has an  
22 overall length of less than twenty-six inches.

23 (23) "Short-barreled shotgun" means a shotgun having one or more  
24 barrels less than eighteen inches in length and any weapon made from  
25 a shotgun by any means of modification if such modified weapon has an  
26 overall length of less than twenty-six inches.

27 (24) "Shotgun" means a weapon with one or more barrels, designed  
28 or redesigned, made or remade, and intended to be fired from the  
29 shoulder and designed or redesigned, made or remade, and intended to  
30 use the energy of the explosive in a fixed shotgun shell to fire  
31 through a smooth bore either a number of ball shot or a single  
32 projectile for each single pull of the trigger.

33 (25) "Transfer" means the intended delivery of a firearm to  
34 another person without consideration of payment or promise of payment  
35 including, but not limited to, gifts and loans. "Transfer" does not  
36 include the delivery of a firearm owned or leased by an entity  
37 licensed or qualified to do business in the state of Washington to,  
38 or return of such a firearm by, any of that entity's employees or  
39 agents for lawful purposes in the ordinary course of business.

1 (26) "Unlicensed person" means any person who is not a licensed  
2 dealer under this chapter.

3 (27) "Curio or relic" has the same meaning as provided in 27  
4 C.F.R. Sec. 478.11.

5 (28) "Licensed collector" means a person who is federally  
6 licensed under 18 U.S.C. Sec. 923(b).

7 **Sec. 2.** RCW 9.41.113 and 2015 c 1 s 3 are each amended to read  
8 as follows:

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

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

18 (a) The person is a licensed dealer;

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

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

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

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

36 (b) Except as provided in (a) of this subsection, the licensed  
37 dealer shall comply with all requirements of federal and state law  
38 that would apply if the licensed dealer were selling or transferring  
39 the firearm from its inventory to the purchaser or transferee,

1 including but not limited to conducting a background check on the  
2 prospective purchaser or transferee in accordance with federal and  
3 state law requirements and fulfilling all federal and state  
4 recordkeeping requirements.

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

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

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

15 (4) This section does not apply to:

16 (a) A transfer between immediate family members, which for this  
17 subsection shall be limited to spouses, domestic partners, parents,  
18 parents-in-law, children, siblings, siblings-in-law, grandparents,  
19 grandchildren, nieces, nephews, first cousins, aunts, and uncles,  
20 that is a bona fide gift or loan;

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

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

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

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

29 (d) A temporary transfer of possession of a firearm if: (i) The  
30 transfer is intended to prevent suicide or self-inflicted great  
31 bodily harm; (ii) the transfer lasts only as long as reasonably  
32 necessary to prevent death or great bodily harm; and (iii) the  
33 firearm is not utilized by the transferee for any purpose for the  
34 duration of the temporary transfer;

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

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

4       ~~((f))~~ (g) The temporary transfer of a firearm (i) between  
5 spouses or domestic partners; (ii) if the temporary transfer occurs,  
6 and the firearm is kept at all times, at an established shooting  
7 range authorized by the governing body of the jurisdiction in which  
8 such range is located; (iii) if the temporary transfer occurs and the  
9 transferee's possession of the firearm is exclusively at a lawful  
10 organized competition involving the use of a firearm, or while  
11 participating in or practicing for a performance by an organized  
12 group that uses firearms as a part of the performance; (iv) to a  
13 person who is under eighteen years of age for lawful hunting,  
14 sporting, or educational purposes while under the direct supervision  
15 and control of a responsible adult who is not prohibited from  
16 possessing firearms; ~~((e))~~ (v) under circumstances in which the  
17 transferee and the firearm remain in the presence of the transferor;  
18 or (vi) while hunting if the hunting is legal in all places where the  
19 person to whom the firearm is transferred possesses the firearm and  
20 the person to whom the firearm is transferred has completed all  
21 training and holds all licenses or permits required for such hunting,  
22 provided that any temporary transfer allowed by this subsection is  
23 permitted only if the person to whom the firearm is transferred is  
24 not prohibited from possessing firearms under state or federal law;  
25 ~~((e)~~

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

35       (i) A transfer when the transferee is a licensed collector and  
36 the firearm being transferred is a curio or relic.

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