



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

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**VIA ECF FILING**

September 21, 2017

Ms. Molly C. Dwyer  
Clerk, United States Court of Appeals  
For the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Re: *Northwest School of Safety, et al. v. Ferguson, et al.*, No. 15-35452  
Supplemental Letter Brief of State Defendants-Appellees

Dear Ms. Dwyer:

The Court's Order requested that the parties file supplemental letter briefs addressing two matters: "(1) whether this case is moot given the amendments [to Initiative 594], and (2) any other enforcement actions or interpretations of Initiative 594 that affect the standing inquiry." Order at 1 (citing S.B. 5552, 65th Reg. Sess. (Wash. 2017)). The State does not believe that the amendments to Wash. Rev. Code § 9.41.113 render this case moot, but rather they further confirm Plaintiffs' lack of standing to bring this pre-enforcement challenge under this Court's established test. *See Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d

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1134, 1139 (9th Cir. 2000) (en banc). Regarding the second matter, to the State's knowledge there have been no prosecutions or interpretations of I-594 that affect this Court's standing analysis. But the State is aware of two cases filed under I-594 in connection with the commission of another crime (murder and drug sales). Thus, the two known prosecutions are strikingly dissimilar from the Plaintiffs' hypothetical claims and further confirm their lack of standing.

**A. The 2017 Amendments to I-594 Drive Home Plaintiffs' Lack of Standing**

The Court asked whether recent amendments to I-594 render this case moot. While those amendments do specifically address many of the hypothetical scenarios Plaintiffs expressed concern about in their complaint, the State believes the better view is not that the amendments render the case moot, but rather that Plaintiffs never had standing in the first place, and the recent amendments only further demonstrate that they had never shown a "genuine threat of imminent prosecution," and certainly cannot do so now. *Thomas*, 220 F.3d at 1139.

Plaintiffs base their claim on several hypothetical scenarios involving a change in possession of firearms between one person and another. Plaintiffs disclaim any intent to violate I-594, but nonetheless challenge the constitutionality

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of I-594's requirement of a background check before certain "transfers" of firearms. ER 28-32. I-594 defined covered "transfers" requiring a background check and included exceptions to that requirement. Wash. Rev. Code § 9.41.010(27) (defining "transfer"); Wash. Rev. Code § 9.41.113 (setting forth requirements for background checks).

The Washington State Legislature enacted Engrossed Substitute Senate Bill 5552 (ESSB 5552), amending the provisions of I-594 at issue in this case, effective July 23, 2017.<sup>1</sup> ESSB 5552 included two sections. The first amended the definition of "transfer." The second broadened the exceptions to the background check requirement.

Section one of the new legislation amended the definition of "transfer" to provide (with added language underlined):

"Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. "Transfer" does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in the state of Washington to, or return of such a firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

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<sup>1</sup> The enacted legislation is chaptered as Laws of 2017, ch. 264. That section amended Wash. Rev. Code § 9.41.113. A copy of the enacted bill is attached for ease of reference.

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ESSB 5552, § 1 (codified as Wash. Rev. Code § 9.41.010(27)).

The new legislation also amended the exemptions to the background check requirement of I-594, under Wash. Rev. Code § 9.41.113(4), to add two new exemptions and to broaden two more:

- ESSB 5552 expanded the existing exemption for transfers between immediate family members to add parents-in-law and siblings-in-law, and to include loans as well as gifts. ESSB 5552, § 2 (amending Wash. Rev. Code § 9.41.113(4)(a));
- ESSB 5552 added a new exemption for:

A temporary transfer of possession of a firearm if: (i) The transfer is intended to prevent suicide or self-inflicted great bodily harm; (ii) the transfer lasts only as long as reasonably necessary to prevent death or great bodily harm; and (iii) the firearm is not utilized by the transferee for any purpose for the duration of the temporary transfer. ESSB 5552, § 2 (adding Wash. Rev. Code § 9.41.113(4)(d));

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- ESSB 5552 amended an existing exemption for certain temporary transfers of a firearm, to add a broad new exemption for temporary transfers that occur “under circumstances in which the transferee and the firearm remain in the presence of the transferor.” ESSB 5552, § 2 (codified as Wash. Rev. Code § 9.41.113(4)(g)(v)); and
- ESSB 5552 added a new exemption for:  
A sale or transfer when the purchaser or transferee is a licensed collector and the firearm being sold or transferred is a “curio or relic.” ESSB 5552, § 2 (adding Wash. Rev. Code § 9.41.114(4)(i)).  
ESSB 5552 also adopted a federal definition of the term “curio or relic.” ESSB 5552, § 1 (*codified as* Wash. Rev. Code § 9.41.010(4)).

Plaintiffs’ complaint offers a dozen hypothetical scenarios that they assert might constitute transfers of a firearm requiring a background check under I-594 if they were to engage in them—which they disclaim any intention of doing. The District Court found it unnecessary to address whether I-594 would have required a background check in these hypothetical scenarios, even under the original version of I-594. The court applied this Court’s pre-enforcement standing test and

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“look[ed] to whether the plaintiffs have articulated a ‘concrete plan’ to violate the law in question, whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and the history of past prosecution or enforcement under the challenged statute.” *Thomas*, 220 F.3d at 1139. Applying those factors, the court found: “Plaintiffs explicitly concede that they have no intention of violating I-594, Plaintiffs have failed to allege any specific warning or threat to initiate a prosecution, and Plaintiffs have failed to allege any history of past prosecution or enforcement of I-594. Therefore, under *Thomas*, the Court concludes that Plaintiffs have failed to show a genuine or imminent threat of prosecution and lack standing to bring this challenge to the ‘transfer’ provision of I-594.” Docket 37, at 6 (Order Granting Defs.’ Mot. Dismiss).

The District Court properly dismissed the case for lack of standing under *Thomas*. The 2017 amendments do nothing to undermine this analysis, and only further confirm that this holding was correct. Specifically, the amendments do not change that “Plaintiffs explicitly concede that they have no intention of violating I-594, Plaintiffs have failed to allege any specific warning or threat to initiate a prosecution, and Plaintiffs have failed to allege any history of past prosecution or

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enforcement of I-594.” *Id.* But the amendments do make crystal clear that many of the hypotheticals posited by Plaintiffs involve no plausible threat of prosecution.

For example, Plaintiffs speculated that I-594 might interfere with their ability to engage in firearm safety training by requiring a background check to “transfer” a firearm from an instructor to a student. ER 28-29. The State had never asserted that such conduct would violate I-594, and no one (including Plaintiffs) had ever been threatened with prosecution for such conduct. The 2017 amendments remove any potential concern about this scenario by exempting temporary transfers from the background check requirement if the transferee and the firearm remain in the presence of the transferor. ESSB 5552, § 2. The amendments thus further demonstrate that Plaintiffs have shown no “genuine threat of imminent prosecution.” *Thomas*, 220 F.3d at 1139.

Similarly, Plaintiffs asserted that they could not determine whether the transfer of a firearm at a firing range required a background check if the firearm was not stored at the range. ER 31-32. Here again, the State had never asserted that such conduct would violate I-594, and no one (including Plaintiffs) had ever been threatened with prosecution for such conduct. If there ever was any doubt about this scenario, it is resolved by the amendment to Wash. Rev. Code § 9.41.113(4)(g)

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providing that a background check is not required when the transferee and the firearm remain in the presence of the transferor. ESSB 5552, § 2 (*codified as* Wash. Rev. Code § 9.41.113(4)(g)(v)).

Likewise, Plaintiffs' expressed concern about transfers between employers and employees who are required to carry firearms (such as armed private security guards and armed private investigators) is now utterly baseless in light of the amendments. Although the State had never asserted that such conduct would violate I-594, and no one (including Plaintiffs) had ever been threatened with prosecution for such conduct, ESSB 5552, § 1 amended the definition of "transfer" in Wash. Rev. Code § 9.41.010(27) to exclude such transactions.

The State could go on, but the point is clear. Plaintiffs' claimed fears of prosecution were always speculative, and the 2017 amendments only further confirm that. Plaintiffs had no "concrete plan" to violate I-594, "the prosecuting authorities" had not "communicated a specific warning or threat to initiate proceedings" based on Plaintiffs' conduct, and there was no "history of past prosecution or enforcement under the challenged statute" based on conduct like Plaintiffs' here. *Thomas*, 220 F.3d at 1139. The 2017 amendments only solidify these conclusions.



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**B. The State is Unaware of Any Other Enforcement Actions or Interpretations of Initiative 594 That Affect the Standing Inquiry**

The Court also asked the parties to address “any other enforcement actions or interpretations of Initiative 594 that affect the standing inquiry.” Order at 1. The State is not aware of any enforcement actions or interpretations that would affect the standing inquiry. But the State’s efforts to identify any prosecutions for violation of the background check requirement underscore the speculative nature of Plaintiffs’ claims.

In Washington, county prosecutors have primary authority to enforce criminal laws like I-594, so the Attorney General’s Office has no involvement in the overwhelming majority of criminal cases. In anticipation of oral argument on this appeal, the State’s counsel asked, via email, all of Washington’s 39 county prosecuting attorneys whether their counties had charged anybody with a violation of Wash. Rev. Code § 9.41.113 since December 4, 2014 (the effective date of I-594). Based on their responses, the State is aware of only two charges ever having been filed under Wash. Rev. Code § 9.41.113.

The two cases that have been filed under I-594 differ dramatically from the hypothetical fact patterns posited by Plaintiffs. In one case, the prosecutor alleges that a firearm was transferred without a background check and was later used as a

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murder weapon. In the other, the defendant is accused of stealing the firearm from a store and exchanging it for drugs. Both cases are currently pending. The State is unaware of any other case charged under the statute.

The few prosecutions that have resulted under I-594 highlight that prosecutions under the statute arise rarely and when serious crime draws law enforcement attention to a failure to obtain a background check. Nothing about these two prosecutions creates for Plaintiffs “a genuine threat of imminent prosecution” based on their dramatically different hypothetical scenarios. *Thomas*, 220 F.3d at 1139. Plaintiffs have failed to allege any specific threat that any of them will be prosecuted for any crime, and nothing about these two prosecutions changes that.

For these reasons, the District Court’s dismissal of this action should be affirmed.

Sincerely,

s/ Jeffrey T. Even  
JEFFREY T. EVEN  
*Deputy Solicitor General*

Enclosure  
cc: Counsel of Record (w/enclosure)

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**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury under the laws of the state of Washington, that I electronically filed a true and correct copy of the foregoing document with the Ninth Circuit Court of Appeals ECF system, which will send notification of the filing to the following:

David B. Edwards Steven W. Fogg Corr Cronin Michelson Baumgardner & Preece 1001 4th Avenue, Suite 3900 Seattle, WA 98154-1051 dedwards@corrchronin .com sfogg@corrchronin.com	Mikolaj T. Tempski Tempski Law Firm PS 40 Lake Bellevue, Suite 100 Bellevue, WA 98005 Email: Miko@TempskiLaw.com
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DATED this 21st day of September 2017, at Olympia, Washington.

s/ Stephanie N. Lindey  
STEPHANIE N. LINDEY  
*Legal Assisistant*

CERTIFICATION OF ENROLLMENT

**ENGROSSED SUBSTITUTE SENATE BILL 5552**

Chapter 264, Laws of 2017

65th Legislature  
2017 Regular Session

FIREARM TRANSFER BACKGROUND CHECK--EXEMPTIONS

EFFECTIVE DATE: 7/23/2017

Passed by the Senate April 17, 2017  
Yeas 48 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House April 7, 2017  
Yeas 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 10, 2017 11:02 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5552** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

**Secretary**

FILED

May 10, 2017

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5552**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2017 Regular Session

**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, defined to include volunteers participating in an honor  
40 guard, 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 sale or transfer when the purchaser or transferee is a  
36 licensed collector and the firearm being sold or transferred is a  
37 curio or relic.

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Approved by the Governor May 10, 2017.

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