

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (({- text here -})) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *

INITIATIVE 676

AN ACT Relating to handgun safety; amending RCW 9.41.047, 9.41.0975, 9.41.094, 9.41.097, 9.41.129, and 9.41.800; adding a new chapter to Title 9 RCW; creating a new section; prescribing penalties; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. The sovereign people of the state of Washington declare that:

(1) Handguns are a leading cause of death and serious injury. In recent years more people have been murdered by handguns in Washington state (population 5.5 million) than in the entire countries of Canada (population 26.9 million) and Great Britain (population 57.5 million) combined.

(2) As a result of unsafe use or storage of handguns, children frequently are killed or wounded, either through criminal violence, accidents, or suicide. Nationally, more than five thousand children under the age of nineteen are killed or wounded each year by handguns. Many of these child victims died in Washington state.

(3) The injury and death caused by the unsafe storage and use of handguns constitutes a direct threat to the public health and safety of the citizens of Washington state.

(4) The great majority of firearms deaths resulting from homicide, accident, and suicide are caused by handguns and not rifles or shotguns.

(5) A handgun, like an automobile, is extremely dangerous when used by a person without proper training in its safe operation, handling, and storage.

(6) Requiring that each handgun user obtain a handgun safety license is a reasonable means for the public to protect itself from the unlawful and unsafe use and storage of these firearms.

{+ NEW SECTION. +} Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Handgun" means a pistol, as defined in RCW 9.41.010, except a pistol that has been permanently disabled so that it cannot fire a projectile, or an antique firearm as defined in RCW 9.41.010(8).

(2) "Trigger-locking device" means any device, mechanism, or

container that prevents the discharge of the handgun unless the device or mechanism is deactivated, removed, or opened by use of a key, security code, or other means that effectively limits the operation of the handgun to persons permitted to use the handgun.

(3) The definitions of "firearm," "pistol," "antique firearm," "dealer," "law enforcement officer," and other definitions in RCW 9.41.010 apply throughout this chapter unless the context clearly requires otherwise.

{+ NEW SECTION. +} Sec. 3. Notwithstanding any other provisions of law, it is unlawful within the state of Washington for any person, corporation, or entity knowingly to sell, deliver, loan, or otherwise transfer a handgun to any person, including an individual taking possession of a handgun as an employee or agent of another person, unless the handgun is equipped with an operable trigger-locking device; and

(1) As to any dealer, in addition to complying with all applicable requirements of RCW 9.41.090, the dealer has verified that the transferee possesses a valid handgun safety license by: (a) Examining the handgun safety license; and (b) examining a valid driver's license or identification card containing a photograph of the transferee issued by a state or the United States. The dealer's signature and delivery of the application for the purchase of a pistol under RCW 9.41.090 constitutes certification that the dealer has verified that the transferee possesses a valid handgun safety license; and

(2) As to any transferor other than a dealer, the transferor has verified that the transferee possesses a valid handgun safety license by: (a) Examining the handgun safety license, (b) examining a valid driver's license or identification card containing a photograph of the transferee issued by a state or the United States, and (c) attesting on a form prepared by the department of licensing that the previous conditions have been satisfied, and mailing or otherwise delivering this form to the department of licensing within three business days of the transfer. The form shall identify the transferor and transferee and the handgun safety license number of the transferee.

{+ NEW SECTION. +} Sec. 4. (1) Notwithstanding any other provision of law, it is unlawful within the state of Washington for any person knowingly to possess or control a handgun unless the person possesses a valid handgun safety license.

(2) The following are affirmative defenses under this section:

(a) The person possessed a valid handgun safety license within the preceding two years and has not become ineligible for a handgun safety license in the interim;

(b) At the time of the violation, the person was not a resident of the state of Washington, was eighteen years of age or older, and was carrying the handgun in compliance with RCW 9.41.050 (1) through (3), (4) (a) through (i) and (k) through (n), and (5) through (7); or

(c) At the time of the violation, the person was a resident of the state of Washington and had been a resident for less than sixty days.

{+ NEW SECTION. +} Sec. 5. A person, corporation, or entity who knowingly violates section 3 of this act is guilty of a misdemeanor upon conviction of the first offense, and of a class C felony upon conviction of any subsequent offense. A person who knowingly violates section 4 of this act is guilty of a class 2 civil infraction upon being found to have committed a first offense, of a misdemeanor upon

conviction of a second offense, and of a class C felony upon conviction of any subsequent offense. For purposes of this section, all offenses occurring in a single incident are considered a single offense.

{+ NEW SECTION. +} Sec. 6. Any handgun possessed or controlled in violation of section 4 of this act is contraband and shall be immediately taken into custody by a law enforcement officer. Any such contraband handgun shall be forfeited under the provisions of RCW 9.41.098. However, it is an absolute defense to forfeiture under this section that the owner of the handgun currently has a valid handgun safety license, or obtains or renews a handgun safety license within sixty days of the date of receipt of notice of the intended forfeiture. Nothing in this chapter is intended to abrogate the rights of privacy protected by Article I, section 7 of the state Constitution or the Fourth Amendment to the Constitution of the United States.

{+ NEW SECTION. +} Sec. 7. As used in this act, the term "handgun safety license" means a license issued under the provisions of section 8 of this act, containing at a minimum the licensee's name, address, date of birth, physical description, and unique license number. The department of licensing may authorize the issuance of a license combining a handgun safety license with a concealed pistol license.

{+ NEW SECTION. +} Sec. 8. (1) The department of licensing, or any agency designated by it under section 12 of this act, shall issue or renew a handgun safety license valid for a period of five years, if the issuing agency determines that the applicant:

(a) Is at least eighteen years of age;

(b) Has been issued a handgun safety certificate or has previously been issued a handgun safety license;

(c) Is not prohibited from possessing or receiving a handgun under federal or state law, based upon a check of records as provided by RCW 9.41.090(2); and

(d) Has paid the fee provided by section 12 of this act.

(2) Unless the applicant for a handgun safety license is also applying for a concealed pistol license, the applicant is not required to provide fingerprints in connection with the application process.

(3) A person who knowingly makes a false statement on an application for a handgun safety license is guilty of false swearing under RCW 9A.72.040.

{+ NEW SECTION. +} Sec. 9. (1) A handgun safety license shall be revoked by the issuing agency, or by order of a judge of a court of record, if the agency or judge determines that the holder of the license is prohibited from possessing or receiving a handgun under federal or state law.

(2) The holder of a handgun safety license that is revoked shall return the license to the issuing agency or clerk of the court within ten days after receipt of notice of the revocation, or an earlier date as may be required by the court.

(3) A person who knowingly fails to return a revoked handgun safety license as required by this section is guilty of a misdemeanor.

(4) A person who knowingly possesses a handgun in violation of section 4 of this act, after receiving notice of the revocation of his or her handgun safety license, is guilty of a class C felony.

{+ NEW SECTION. +} Sec. 10. (1) As used in this chapter, the term

"handgun safety certificate" means a certificate that is issued by the department of licensing or its designee upon determination that the applicant:

(a) Has passed a course, approved by the department of licensing, of not less than eight hours of instruction in the safe operation, handling, and storage of handguns; or

(b) Has passed an examination, approved by the department of licensing, establishing a level of knowledge and skill regarding the safe operation, handling, and storage of handguns that is at least equivalent to that provided by the courses approved under (a) of this subsection; or

(c) Has received training in this state or in another state, or in the armed forces of the United States, that the department of licensing determines to establish a level of knowledge and skill regarding the safe operation, handling, and storage of handguns that is at least equivalent to that provided by the courses approved under (a) of this subsection; or

(d) Has received training as an armed private detective, armed security guard, or law enforcement officer that the department of licensing determines to establish a level of knowledge and skill regarding the safe operation, handling, and storage of handguns that is at least equivalent to that provided by the courses approved under (a) of this subsection.

(2) The handgun safety courses and examinations provided for in subsection (1)(a) and (b) of this section shall not be conducted at any facility that is used for the administration of driver's licensing examinations.

(3) The department of licensing may authorize designated law enforcement agencies and private parties to offer and administer the handgun safety courses and examinations provided for in subsection (1)(a) and (b) of this section.

(4) In designing or approving the handgun safety courses and licensing examinations provided for in this section, the department of licensing may consult with organizations concerned with promoting gun safety, law enforcement agencies, and the armed forces of the United States.

{+ NEW SECTION. +} Sec. 11. A handgun safety license is not a concealed pistol license and possession of a handgun safety license is not a defense to a prosecution for violation of federal law or state law, except for the defenses to state law as specifically set forth in this chapter.

{+ NEW SECTION. +} Sec. 12. (1) The department of licensing shall establish rules and procedures as are necessary for the implementation and enforcement of this act, including rules and procedures for the courses of not less than eight hours of instruction and examinations provided for in section 10 of this act to ensure that persons are properly trained in the safe operation, handling, and storage of handguns.

(2) The department of licensing may designate the chief of police of a municipality or the sheriff of a county as an agency for accepting and processing applications for handgun safety licenses and issuing and renewing handgun safety licenses on behalf of the department of licensing under this chapter.

(3) The department of licensing is authorized to set fees for the issuance and renewal of handgun safety licenses; these fees to be

deposited into the handgun safety account established under section 16 of this act. However, the fee for issuance or renewal of a handgun safety license alone shall not exceed twenty-five dollars, which shall be distributed as follows:

(a) Fifteen dollars to the issuing authority; and

(b) The remainder to the department of licensing or its designee for expenses incurred in the administration and enforcement of this act.

(4) In cases where an applicant simultaneously is applying for issuance or renewal of both a concealed pistol license and a handgun safety license, no fee shall be charged for the handgun safety license so long as the applicant pays the fee required by law for issuance or renewal of the concealed pistol license.

{+ NEW SECTION. +} Sec. 13. A handgun safety license shall be issued in triplicate. The original thereof shall be issued to the licensee; the duplicate shall within seven days be sent to the director of licensing, if the original was issued by a designee of the department of licensing; and the triplicate shall be preserved for six years by the authority issuing the license. The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this section.

{+ NEW SECTION. +} Sec. 14. (1) This chapter does not apply to the United States or a department or agency of the United States, or a state, or a department, agency, or political subdivision of the state.

(2) Sections 4 and 6 of this act do not apply to:

(a) A law enforcement officer or member of the armed forces of the United States or the national guard or the organized reserves who is required to possess a handgun in connection with his or her official duties;

(b) A person handling or using a handgun under the immediate supervision of an individual with a valid Washington handgun safety license or of an individual who is exempt under this chapter, provided that the person is:

(i) Using the handgun as part of training at a handgun safety course;

(ii) Using the handgun for target shooting or for lawful organized competition at an established location at which such shooting or competition is authorized by the governing body of the jurisdiction; or

(iii) Temporarily handling the handgun, which is unloaded, in the presence of a dealer for the purpose of considering purchase of the handgun;

(c) A person temporarily possessing a handgun during an emergency in which the person is exercising his or her rights under RCW 9A.16.020(3) or 9A.16.110(1); or

(d) A person who possesses a valid Washington concealed pistol license as of the effective date of this act, until such concealed pistol license expires, is renewed or revoked, or January 1, 2004, whichever comes first.

{+ NEW SECTION. +} Sec. 15. As soon as practicable, and no later than July 1, 1998, the department of licensing shall commence a public awareness and educational program regarding the provisions and requirements of this act.

{+ NEW SECTION. +} Sec. 16. The handgun safety account is created in the custody of the state treasurer. All receipts from section 12 of this act must be deposited into the account. Expenditures from the account may be used only for costs incurred by the department of licensing or its designee in the administration and enforcement of this act. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 17. RCW 9.41.047 and 1996 c 295 s 3 are each amended to read as follows:

(1) At the time a person is convicted of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any {+ handgun safety license and +} concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record.

The convicting or committing court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the department of licensing, along with the date of conviction or commitment.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a {+ handgun safety license or a +} concealed pistol license. If the person does have a {+ handgun safety license or a +} concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license {+ or licenses +}.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition a court of record to have his or her right to possess a firearm restored. At the time of commitment, the court shall specifically state to the person that he or she is barred from possession of firearms.

(b) The secretary of social and health services shall develop appropriate rules to create an approval process under this subsection. The rules must provide for the restoration of the right to possess a firearm upon a showing in a court of competent jurisdiction that the person is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to himself or herself, others, or the public. Unlawful possession of a firearm under this subsection shall be punished as a class C felony under chapter 9A.20 RCW.

(c) A person petitioning the court under this subsection (3) shall bear the burden of proving by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur.

Sec. 18. RCW 9.41.0975 and 1996 c 295 s 9 are each amended to read as follows:

(1) The state, local governmental entities, any public or private agency, and the employees of any state or local governmental entity or public or private agency, acting in good faith, are immune from liability:

(a) For failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful;

(b) For preventing the sale or transfer of a firearm to a person who may lawfully receive or possess a firearm;

(c) For issuing a {+ handgun safety license or a +} concealed pistol license to a person ineligible for such a license;

(d) For failing to issue a {+ handgun safety license or a +} concealed pistol license to a person eligible for such a license;

(e) For revoking or failing to revoke an issued {+ handgun safety license or +} concealed pistol license;

(f) For errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a {+ handgun safety license or a +} concealed pistol license;

(g) For issuing a dealer's license to a person ineligible for such a license; or

(h) For failing to issue a dealer's license to a person eligible for such a license.

(2) An application may be made to a court of competent jurisdiction for a writ of mandamus:

(a) Directing an issuing agency to issue a {+ handgun safety license or a +} concealed pistol license wrongfully refused;

(b) Directing a law enforcement agency to approve an application to purchase wrongfully denied;

(c) Directing that erroneous information resulting either in the wrongful refusal to issue a {+ handgun safety license or a +} concealed pistol license or in the wrongful denial of a purchase application be corrected; or

(d) Directing a law enforcement agency to approve a dealer's license wrongfully denied.

The application for the writ may be made in the county in which the application for a {+ handgun safety license, +} concealed pistol license{+ , +} or to purchase a pistol was made, or in Thurston county, at the discretion of the petitioner. A court shall provide an expedited hearing for an application brought under this subsection (2) for a writ of mandamus. A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs.

Sec. 19. RCW 9.41.094 and 1994 sp.s. c 7 s 411 are each amended to read as follows:

A signed application to purchase a pistol {+ or to obtain a handgun safety license +} shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release, to an inquiring court or law enforcement agency, information relevant to the applicant's eligibility to purchase a pistol (({- to an inquiring court -})) or (({- law enforcement agency -})) {+ to obtain a handgun safety license +}.

Sec. 20. RCW 9.41.097 and 1994 sp.s. c 7 s 412 are each amended to read as follows:

(1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of

a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued {+ a handgun safety license under chapter 9.--- RCW (sections 2 through 16 and 24 of this act), +} a concealed pistol license under RCW 9.41.070{+ , +} or to purchase a pistol under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.170; (b) an issuing authority pursuant to RCW 9.41.047 (({- or -})) {+ , +} 9.41.070{+ , or section 8 of this act +}; (c) a chief of police or sheriff pursuant to RCW 9.41.090 (({- or -})) {+ , +} 9.41.170{+ , or section 8 of this act +}; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in RCW 42.17.318.

Sec. 21. RCW 9.41.129 and 1994 sp.s. c 7 s 417 are each amended to read as follows:

The department of licensing may keep copies or records of applications for {+ handgun safety licenses provided for under section 7 of this act or +} concealed pistol licenses provided for in RCW 9.41.070, copies or records of applications for alien firearm licenses, copies or records of applications to purchase pistols provided for in RCW 9.41.090, and copies or records of pistol transfers provided for in RCW 9.41.110. The copies and records shall not be disclosed except as provided in RCW 42.17.318.

Sec. 22. RCW 9.41.800 and 1996 c 295 s 14 are each amended to read as follows:

(1) Any court when entering an order authorized under RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.50.060, or 26.50.070 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) {+ Require the party to surrender any handgun safety license issued under section 8 of this act;

(d) +} Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(({- (d) -})) {+ (e) +} Prohibit the party from obtaining or possessing a concealed pistol license{+ ; or

(f) Prohibit the party from obtaining or possessing a handgun safety license +}.

(2) Any court when entering an order authorized under RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.50.060, or 26.50.070 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a pistol under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous

weapon;

(b) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(c) {+ Require the party to surrender any handgun safety license issued under section 8 of this act;

(d) +} Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(({- (d) -})) {+ (e) +} Prohibit the party from obtaining or possessing a concealed pistol license{+ ; or

(f) Prohibit the party from obtaining or possessing a handgun safety license +}.

(3) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1), (2), and (3) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(5) The requirements of subsections (1), (2), and (4) of this section may be for a period of time less than the duration of the order.

(6) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court.

{+ NEW SECTION. +} Sec. 23. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except sections 3 through 6 of this act take effect January 1, 1999.

{+ NEW SECTION. +} Sec. 24. This chapter may be known and cited as the Handgun Safety Act.

{+ NEW SECTION. +} Sec. 25. Sections 2 through 16 and 24 of this act constitute a new chapter in Title 9 RCW.

{+ NEW SECTION. +} Sec. 26. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---