

2 **ESSB 6153** - H COMM AMD
3 By Committee on Judiciary

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 70.74.010 and 1972 ex.s. c 88 s 5 are each amended to
8 read as follows:

9 As used in this chapter, unless a different meaning is plainly
10 required by the context:

11 (1) The terms "authorized", "approved" or "approval" shall be held
12 to mean authorized, approved, or approval by the department of labor
13 and industries.

14 (2) The term "blasting agent" shall be held to mean and include any
15 material or mixture consisting of a fuel and oxidizer, intended for
16 blasting, not otherwise classified as an explosive, and in which none
17 of the ingredients are classified as an explosive, provided that the
18 finished product, as mixed and packaged for use or shipment, cannot be
19 detonated when unconfined by means of a No. 8 test blasting cap.

20 (3) The term "explosive" or "explosives" whenever used in this
21 chapter, shall be held to mean and include any chemical compound or
22 mechanical mixture that is commonly used or intended for the purpose of
23 producing an explosion, that contains any oxidizing and combustible
24 units, or other ingredients, in such proportions, quantities or
25 packing, that an ignition by fire, by friction, by concussion, by
26 percussion, or by detonation of any part of the compound or mixture may
27 cause such a sudden generation of highly heated gases that the
28 resultant gaseous pressures are capable of producing destructive

1 effects on contiguous objects or of destroying life or limb. In
2 addition, the term "explosives" shall include all material which is
3 classified as class A, class B, and class C explosives by the federal
4 department of transportation(~~(: PROVIDED, That)~~). However, for the
5 purposes of this chapter small arms ammunition, small arms ammunition
6 primers, smokeless powder not exceeding fifty pounds, and black powder
7 not exceeding five pounds shall not be defined as explosives, unless
8 possessed or used for a purpose inconsistent with small arms use or
9 other lawful purpose.

10 (4) Classification of explosives shall include but not be limited
11 to the following:

12 (a) CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite,
13 nitroglycerin, (~~(picric acid, lead azide, fulminate of mercury)~~)
14 chemicals commonly used to create an explosion, black powder exceeding
15 five pounds, blasting caps in quantities of 1001 or more, and
16 detonating primers.

17 (b) CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant
18 explosives, including smokeless propellants exceeding fifty pounds.

19 (c) CLASS C EXPLOSIVES: (Including certain types of manufactured
20 articles which contain class A or class B explosives, or both, as
21 components but in restricted quantities) blasting caps in quantities of
22 1000 or less.

23 (5) The term "explosive-actuated power devices" shall be held to
24 mean any tool or special mechanized device which is actuated by
25 explosives, but not to include propellant-actuated power devices.

26 (6) The term "magazine", shall be held to mean and include any
27 building or other structure, other than a factory building, used for
28 the storage of explosives.

29 (7) The term "improvised device" means a device which is fabricated
30 with explosives or destructive, lethal, noxious, pyrotechnic, or

1 incendiary chemicals and which is designed to disfigure, destroy,
2 distract, or harass.

3 (8) The term "inhabited building", shall be held to mean and
4 include only a building regularly occupied in whole or in part as a
5 habitation for human beings, or any church, schoolhouse, railroad
6 station, store, or other building where people are accustomed to
7 assemble, other than any building or structure occupied in connection
8 with the manufacture, transportation, storage, or use of explosives.

9 (9) The term "explosives manufacturing plant" shall be held to mean
10 and include all lands, with the buildings situated thereon, used in
11 connection with the manufacturing or processing of explosives or in
12 which any process involving explosives is carried on, or the storage of
13 explosives thereat, as well as any premises where explosives are used
14 as a component part or ingredient in the manufacture of any article or
15 device.

16 (10) The term "explosives manufacturing building", shall be held to
17 mean and include any building or other structure (excepting magazines)
18 containing explosives, in which the manufacture of explosives, or any
19 processing involving explosives, is carried on, and any building where
20 explosives are used as a component part or ingredient in the
21 manufacture of any article or device.

22 (11) The term "railroad" shall be held to mean and include any
23 steam, electric, or other railroad which carries passengers for hire.

24 (12) The term "highway" shall be held to mean and include any
25 public street, public alley, or public road.

26 (13) The term "efficient artificial barricade" shall be held to
27 mean an artificial mound or properly revetted wall of earth of a
28 minimum thickness of not less than three feet or such other artificial
29 barricade as approved by the department of labor and industries.

1 (14) The term "person" shall be held to mean and include any
2 individual, firm, copartnership, corporation, company, association,
3 joint stock association, and including any trustee, receiver, assignee,
4 or personal representative thereof.

5 (15) The term "dealer" shall be held to mean and include any person
6 who purchases explosives or blasting agents for the sole purpose of
7 resale, and not for use or consumption.

8 (16) The term "forbidden or not acceptable explosives" shall be
9 held to mean and include explosives which are forbidden or not
10 acceptable for transportation by common carriers by rail freight, rail
11 express, highway, or water in accordance with the regulations of the
12 federal department of transportation.

13 (17) The term "handloader" shall be held to mean and include any
14 person who engages in the noncommercial assembling of small arms
15 ammunition for his own use, specifically the operation of installing
16 new primers, powder, and projectiles into cartridge cases.

17 (18) The term "handloader components" means small arms ammunition,
18 small arms ammunition primers, smokeless powder not exceeding fifty
19 pounds, and black powder as used in muzzle loading firearms not
20 exceeding five pounds.

21 (19) The term "fuel" shall be held to mean and include a substance
22 which may react with the oxygen in the air or with the oxygen yielded
23 by an oxidizer to produce combustion.

24 (20) The term "motor vehicle" shall be held to mean and include any
25 self-propelled automobile, truck, tractor, semi-trailer or full
26 trailer, or other conveyance used for the transportation of freight.

27 (21) The term "natural barricade" shall be held to mean and include
28 any natural hill, mound, wall, or barrier composed of earth or rock or
29 other solid material of a minimum thickness of not less than three
30 feet.

1 (22) The term "oxidizer" shall be held to mean a substance that
2 yields oxygen readily to stimulate the combustion of organic matter or
3 other fuel.

4 (23) The term "propellant-actuated power device" shall be held to
5 mean and include any tool or special mechanized device or gas generator
6 system which is actuated by a propellant or which releases and directs
7 work through a propellant charge.

8 (24) The term "public conveyance" shall be held to mean and include
9 any railroad car, streetcar, ferry, cab, bus, airplane, or other
10 vehicle which is carrying passengers for hire.

11 (25) The term "public utility transmission system" shall mean power
12 transmission lines over 10 KV, telephone cables, or microwave
13 transmission systems, or buried or exposed pipelines carrying water,
14 natural gas, petroleum, or crude oil, or refined products and
15 chemicals, whose services are regulated by the utilities and
16 transportation commission, municipal, or other publicly owned systems.

17 (26) The term "purchaser" shall be held to mean any person who
18 buys, accepts, or receives any explosives or blasting agents.

19 (27) The term (~~("pyrotechnics")~~) "pyrotechnic" shall be held to
20 mean and include any combustible or explosive compositions or
21 manufactured articles designed and prepared for the purpose of
22 producing audible or visible effects which are commonly referred to as
23 fireworks.

24 (28) The term "small arms ammunition" shall be held to mean and
25 include any shotgun, rifle, pistol, or revolver cartridge, and
26 cartridges for propellant-actuated power devices and industrial guns.
27 Military-type ammunition containing explosive bursting charges,
28 incendiary, tracer, spotting, or pyrotechnic projectiles is excluded
29 from this definition.

1 (29) The term "small arms ammunition primers" shall be held to mean
2 small percussion-sensitive explosive charges encased in a cup, used to
3 ignite propellant powder and shall include percussion caps as used in
4 muzzle loaders.

5 (30) The term "smokeless propellants" shall be held to mean and
6 include solid chemicals or solid chemical mixtures in excess of fifty
7 pounds which function by rapid combustion.

8 (31) The term "user" shall be held to mean and include any natural
9 person, manufacturer, or blaster who acquires, purchases, or uses
10 explosives as an ultimate consumer or who supervises such use.

11 Words used in the singular number shall include the plural, and the
12 plural the singular."

13 **"Sec. 2.** RCW 70.74.022 and 1988 c 198 s 10 are each amended to
14 read as follows:

15 (1) It is unlawful for any person to manufacture, purchase, sell,
16 offer for sale, use, possess, transport, or store any explosive,
17 improvised device, or components that are intended to be assembled into
18 an explosive or improvised device without having a validly issued
19 license from the department of labor and industries, which license has
20 not been revoked or suspended. Violation of this section is a (~~gross~~
21 ~~misdemeanor~~) class C felony.

22 (2) Upon notice from the department of labor and industries or any
23 law enforcement agency having jurisdiction, a person manufacturing,
24 purchasing, selling, offering for sale, using, possessing,
25 transporting, or storing any explosive, improvised device, or
26 components of explosives or improvised devices without a license shall
27 immediately surrender (~~any and all such~~) those explosives, improvised
28 devices, or components to the department or to the respective law
29 enforcement agency.

1 (3) At any time that the director of labor and industries requests
2 the surrender of explosives, improvised devices, or components of
3 explosives or improvised devices, from any person pursuant to
4 subsection (2) of this section, the director may in addition request
5 the attorney general to make application to the superior court of the
6 county in which the unlawful practice exists for a temporary
7 restraining order or such other relief as appears to be appropriate
8 under the circumstances."

9 "Sec. 3. RCW 70.74.160 and 1969 ex.s. c 137 s 19 are each amended
10 to read as follows:

11 No person, except (~~(an official as authorized herein)~~) the director
12 of labor and industries or the director's authorized agent, the owner,
13 the owner's agent, or a person authorized to (~~do so by the owner~~
14 ~~thereof, or his agent, shall~~) enter by the owner or owner's agent, or
15 a law enforcement officer acting within his or her official capacity,
16 may enter any explosives manufacturing building, magazine or car,
17 vehicle or other common carrier containing explosives in this state.
18 Violation of this section is a gross misdemeanor punishable under
19 chapter 9A.20 RCW."

20 "NEW SECTION. Sec. 4. Unless otherwise allowed to do so under
21 this chapter:

22 (1) A person who detonates an explosive or improvised device, under
23 circumstances not amounting to a violation of RCW 70.74.180, 70.74.270,
24 or 70.74.280, or a felony violation of chapter 9A.48 RCW, is guilty of
25 a class B felony if the person detonates the explosive or device with
26 the intent to injure, intimidate, or harass a person, or damage or
27 destroy another's property.

1 (2) A person who detonates an explosive or improvised device under
2 circumstances not amounting to a violation of subsection (1) of this
3 section or RCW 70.74.180, 70.74.270, or 70.74.280, or a felony
4 violation of chapter 9A.48 RCW is guilty of a class C felony.

5 (3) A person who exhibits a device designed, assembled, fabricated,
6 or manufactured, to convey the appearance of an explosive or improvised
7 device, and who intends to, and does, frighten, intimidate, or harass
8 a person, is guilty of a class C felony."

9 "Sec. 5. RCW 70.74.191 and 1985 c 191 s 2 are each amended to read
10 as follows:

11 The laws contained in this chapter and the ensuing regulations
12 prescribed by the department of labor and industries shall not apply
13 to:

14 (1) Explosives or blasting agents in the course of transportation
15 by way of railroad, water, highway or air under the jurisdiction of,
16 and in conformity with, regulations adopted by the federal department
17 of transportation, the Washington state utilities and transportation
18 commission and the Washington state patrol;

19 (2) The laboratories of schools, colleges and similar institutions
20 if confined to the purpose of instruction or research and if not
21 exceeding the quantity of one pound;

22 (3) Explosives in the forms prescribed by the official United
23 States Pharmacopoeia;

24 (4) The transportation, storage and use of explosives or blasting
25 agents in the normal and emergency operations of federal agencies and
26 departments including the regular United States military departments on
27 military reservations, or the duly authorized militia of any state or
28 territory, or to emergency operations of any state department or
29 agency, any police, or any municipality or county;

1 (5) The importation, sale, possession, and use of fireworks,
2 signaling devices, flares, fuses, and torpedoes;

3 (6) The transportation, storage, and use of explosives or blasting
4 agents in the normal and emergency avalanche control procedures as
5 conducted by trained and licensed ski area operator personnel.
6 However, the storage, transportation, and use of explosives and
7 blasting agents for such use shall meet the requirements of regulations
8 adopted by the director of labor and industries; and

9 (7) Any violation under this chapter if any existing ordinance of
10 any city, municipality or county is more stringent than this chapter."

11 "Sec. 6. RCW 70.74.270 and 1984 c 55 s 2 are each amended to read
12 as follows:

13 Every person who maliciously places any explosive (~~substance or~~
14 ~~material~~) or improvised device in, upon, under, against, or near any
15 building, car, vessel, railroad track, airplane, public utility
16 transmission system, (~~or~~) structure, or at any location in such
17 manner or under such circumstances as to destroy or injure it if
18 exploded, shall be (~~punished as follows~~) guilty of the following:

19 (1) If the circumstances and surroundings are such that the safety
20 of any person might be endangered by the explosion, by imprisonment in
21 the state penitentiary for not more than twenty years;

22 (2) In every other case by imprisonment in the state penitentiary
23 for not more than five years."

24 "Sec. 7. RCW 70.74.295 and 1972 ex.s. c 88 s 3 are each amended to
25 read as follows:

26 It shall be unlawful for any person to abandon explosives or
27 (~~explosive substances~~) improvised devices. Violation of this section
28 is a gross misdemeanor punishable under chapter 9A.20 RCW."

1 "NEW SECTION. Sec. 8. (1) Explosives, improvised devices, and
2 components of explosives and improvised devices that are possessed,
3 manufactured, stored, sold, purchased, transported, abandoned,
4 detonated, or used in violation of a provision of this chapter are
5 subject to seizure and forfeiture by a law enforcement agency and no
6 property right exists in them.

7 (2) Seizure of explosives, improvised devices, and components of
8 explosives and improvised devices under subsection (1) of this section
9 may be made if:

10 (a) The seizure is incident to arrest or a search under a search
11 warrant;

12 (b) The explosives, improvised devices, or components have been the
13 subject of a prior judgment in favor of the state in an injunction or
14 forfeiture proceeding based upon this chapter;

15 (c) A law enforcement officer has probable cause to believe that
16 the explosives, improvised devices, or components are directly or
17 indirectly dangerous to health or safety; or

18 (d) The law enforcement officer has probable cause to believe that
19 the explosives, improvised devices, or components were used or were
20 intended to be used in violation of this chapter.

21 (3) A law enforcement agency shall destroy explosives seized under
22 this chapter when it is necessary to protect the public safety and
23 welfare. When destruction is not necessary to protect the public
24 safety and welfare, and the explosives are not being held for evidence,
25 a seizure pursuant to this section commences proceedings for
26 forfeiture.

27 (4) The law enforcement agency under whose authority the seizure
28 was made shall issue a written notice of the seizure and commencement
29 of the forfeiture proceedings to the person from whom the explosives
30 were seized, to any known owner of the explosives, and to any person

1 who has a known interest in the explosives. The notice shall be issued
2 within fifteen days of the seizure. The notice of seizure and
3 commencement of the forfeiture proceedings may be served by any method
4 authorized by law or court rule including but not limited to service by
5 certified mail with return receipt requested. Service by mail shall be
6 considered complete upon mailing within the fifteen-day period
7 following seizure. The law enforcement agency shall provide a form by
8 which the person or persons may request a hearing before the law
9 enforcement agency to contest the seizure.

10 (5) If no person notifies the seizing law enforcement agency in
11 writing of the person's claim of ownership or right to possession of
12 the explosives, improvised devices, or components within thirty days of
13 the date the notice was issued, the seized explosives, devices, or
14 components shall be deemed forfeited.

15 (6) If, within thirty days of the issuance of the notice, any
16 person notifies the seizing law enforcement agency in writing of the
17 person's claim of ownership or right to possession of items seized, the
18 person or persons shall be afforded a reasonable opportunity to be
19 heard as to the claim or right. The hearing shall be before the chief
20 law enforcement or the officer's designee of the seizing agency, except
21 that the person asserting the claim or right may remove the matter to
22 a court of competent jurisdiction if the aggregate value of the items
23 seized is more than five hundred dollars. The hearing and any appeal
24 shall be conducted according to chapter 34.05 RCW. The person claiming
25 to have a lawful right of ownership or possession shall bear the burden
26 of proving that the person (a) has a lawful right of ownership or
27 possession and (b) that the items seized were not possessed,
28 manufactured, stored, sold, purchased, transported, abandoned,
29 detonated, or used in violation of a provision of this chapter with the
30 person's knowledge or consent.

1 (7) The seizing law enforcement agency shall promptly return the
2 items seized to the claimant upon a determination that the claimant is
3 entitled to possession of the items seized.

4 (8) If the items seized are forfeited under this statute, the
5 agency shall destroy the explosives. When explosives are destroyed
6 either to protect public safety or because the explosives were
7 forfeited, the person from whom the explosives were seized loses all
8 rights of action against the law enforcement agency or its employees
9 acting within the scope of their employment, or other governmental
10 entity or employee involved with the seizure and destruction of
11 explosives.

12 (9) This section is not intended to change the seizure and
13 forfeiture powers, enforcement, and penalties available to the
14 department of labor and industries pursuant to chapter 49.17 RCW as
15 provided in RCW 70.74.390."

16 "NEW SECTION. **Sec. 9.** A person who knows of a theft or loss of
17 explosives for which that person is responsible under this chapter
18 shall report the theft or loss to the local law enforcement agency
19 within twenty-four hours of discovery of the theft or loss. The local
20 law enforcement agency shall immediately report the theft or loss to
21 the Washington state patrol and the department of labor and
22 industries."

23 "NEW SECTION. **Sec. 10.** Sections 4, 8, and 9 of this act are
24 each added to chapter 70.74 RCW."

25 "NEW SECTION. **Sec. 11.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

3 **ESSB 6153** - H COMM AMD
4 By Committee on Judiciary

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6 On page 1, line 1 of the title, after "explosives;" strike the
7 remainder of the title and insert "amending RCW 70.74.010, 70.74.022,
8 70.74.160, 70.74.191, 70.74.270, and 70.74.295; adding new sections to
9 chapter 70.74 RCW; and prescribing penalties."