
SENATE BILL 6109

State of Washington 52nd Legislature 1992 Regular Session

By Senators Nelson and Rasmussen

Read first time 01/15/92. Referred to Committee on Law & Justice.

1 AN ACT Relating to the sale at auction or trade of legal forfeited
2 firearms and firearm parts; and amending RCW 9.41.098.

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

4 **Sec. 1.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
5 as follows:

6 (1) The superior courts and the courts of limited jurisdiction of
7 the state may order forfeiture of a firearm which is proven to be:

8 (a) Found concealed on a person not authorized by RCW 9.41.060 or
9 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
10 defense to forfeiture if the person possessed a valid Washington
11 concealed pistol license within the preceding two years and has not
12 become ineligible for a concealed pistol license in the interim.
13 Before the firearm may be returned, the person must pay the past due
14 renewal fee and the current renewal fee;

1 (b) Commercially sold to any person without an application as
2 required by RCW 9.41.090;

3 (c) Found in the possession or under the control of a person at the
4 time the person committed or was arrested for committing a crime of
5 violence or a crime in which a firearm was used or displayed or a
6 felony violation of the uniform controlled substances act, chapter
7 69.50 RCW;

8 (d) Found concealed on a person who is in any place in which a
9 concealed pistol license is required, and who is under the influence of
10 any drug or under the influence of intoxicating liquor, having 0.10
11 grams or more of alcohol per two hundred ten liters of breath or 0.10
12 percent or more by weight of alcohol in the person's blood, as shown by
13 analysis of the person's breath, blood, or other bodily substance;

14 (e) Found in the possession of a person prohibited from possessing
15 the firearm under RCW 9.41.040;

16 (f) Found in the possession of a person free on bail or personal
17 recognizance pending trial, appeal, or sentencing for a crime of
18 violence or a crime in which a firearm was used or displayed, except
19 that violations of Title 77 RCW shall not result in forfeiture under
20 this section;

21 (g) Found in the possession of a person found to have been mentally
22 incompetent while in possession of a firearm when apprehended or who is
23 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

24 (h) Known to have been used or displayed by a person in the
25 violation of a proper written order of a court of general jurisdiction;
26 or

27 (i) Known to have been used in the commission of a crime of
28 violence or a crime in which a firearm was used or displayed or a
29 felony violation of the uniformed controlled substances act, chapter
30 69.50 RCW.

1 (2) Upon order of forfeiture, the court (~~(in its discretion)~~) shall
2 order (~~(destruction)~~) disassembly into parts of any firearm that is
3 illegal for any person to possess. If such parts are legal for any
4 person to possess, the parts shall be auctioned under this section.
5 Parts that are illegal for any person to possess shall be destroyed.
6 All firearms legal for citizen possession that are judicially forfeited
7 or forfeited due to failure to make a claim under RCW 63.32.010,
8 63.40.010, or 63.35.020 shall be submitted for auction or traded to
9 commercial sellers once a year if the submitting agency has accumulated
10 at least ten firearms authorized for sale or trade. Law enforcement
11 agencies may conduct joint auctions for the purpose of maximizing
12 efficiency. A maximum of ten percent of such firearms may be retained
13 for use by local law enforcement agencies and the Washington state
14 patrol. Before submission for auction or trade, a court may
15 temporarily retain forfeited firearms if needed for evidence.

16 (a)(i) The proceeds from any sale shall be divided as follows:
17 (~~(The local jurisdiction and the Washington state patrol shall retain~~
18 ~~its costs, including actual costs of storage and sale, and shall~~
19 ~~forward the remainder to the state department of wildlife for use in~~
20 ~~its firearms training program pursuant to RCW 77.32.155.)) The agency
21 submitting the surplus firearms for sale may retain sixty percent of
22 the total proceeds from the sale of the firearms, to be used by the
23 agency exclusively for law enforcement purposes. Forty percent of the
24 total proceeds shall go to the firearms range account. All costs
25 incurred in selling the surplus firearms shall be paid from the portion
26 retained by the law enforcement agency; or~~

27 (ii) In lieu of selling surplus firearms at auction a law
28 enforcement agency may trade the surplus firearms to a commercial
29 seller in exchange for departmental service weapons or other firearms
30 or police equipment, to be used by the agency exclusively for law

1 enforcement purposes. If surplus firearms are exchanged for the
2 described equipment, the value of the equipment shall not be subject to
3 division under (a)(i) of this subsection.

4 (b) If a firearm is delivered to a law enforcement agency and the
5 agency no longer requires use of the firearm, the agency shall dispose
6 of the firearm by auction or trade as provided by this subsection. The
7 public auctioning agency shall, as a minimum, maintain a record of all
8 forfeited firearms by manufacturer, model, caliber, serial number, date
9 and circumstances of forfeiture, and final disposition. The records
10 shall be open to public inspection and copying.

11 (3) The court shall order the firearm returned to the owner upon a
12 showing that there is no probable cause to believe a violation of
13 subsection (1) of this section existed or the firearm was stolen from
14 the owner or the owner neither had knowledge of nor consented to the
15 act or omission involving the firearm which resulted in its forfeiture.

16 (4) A law enforcement officer of the state or of any county or
17 municipality may confiscate a firearm found to be in the possession of
18 a person under circumstances specified in subsection (1) of this
19 section. After confiscation, the firearm shall not be surrendered
20 except: (a) To the prosecuting attorney for use in subsequent legal
21 proceedings; (b) for disposition according to an order of a court
22 having jurisdiction as provided in subsection (1) of this section; or
23 (c) to the owner if the proceedings are dismissed or as directed in
24 subsection (3) of this section.

25 (5) This section shall apply to all forfeited firearms in the
26 possession of a law enforcement agency, regardless of when the firearms
27 came into the possession of the law enforcement agency.