

2 SHB 1118 - S COMM AMD  
3 By Committee on Law & Justice

4 ADOPTED 4/6/93

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  
29 effects on contiguous objects or of destroying life or limb. In  
30 addition, the term "explosives" shall include all material which is  
31 classified as class A, class B, and class C explosives by the federal  
32 department of transportation(~~(:—PROVIDED, That)~~). For the purposes of  
33 this chapter small arms ammunition, small arms ammunition primers,  
34 smokeless powder not exceeding fifty pounds, and black powder not  
35 exceeding five pounds shall not be defined as explosives, unless

1 possessed or used for a purpose inconsistent with small arms use or  
2 other lawful purpose.

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

5 (a) CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite,  
6 nitroglycerin, picric acid, lead azide, fulminate of mercury, black  
7 powder exceeding five pounds, blasting caps in quantities of 1001 or  
8 more, and detonating primers.

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

11 (c) CLASS C EXPLOSIVES: (Including certain types of manufactured  
12 articles which contain class A or class B explosives, or both, as  
13 components but in restricted quantities) blasting caps in quantities of  
14 1000 or less.

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

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

21 (7) The term "improvised device" means a device which is fabricated  
22 with explosives or destructive, lethal, noxious, pyrotechnic, or  
23 incendiary chemicals and which is designed to disfigure, destroy,  
24 distract, or harass.

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

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

38 (10) The term "explosives manufacturing building", shall be held to  
39 mean and include any building or other structure (excepting magazines)

1 containing explosives, in which the manufacture of explosives, or any  
2 processing involving explosives, is carried on, and any building where  
3 explosives are used as a component part or ingredient in the  
4 manufacture of any article or device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7       Words used in the singular number shall include the plural, and the  
8 plural the singular.

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

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

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

26       (3) At any time that the director of labor and industries requests  
27 the surrender of explosives, improvised devices, or components of  
28 explosives or improvised devices, from any person pursuant to  
29 subsection (2) of this section, the director may in addition request  
30 the attorney general to make application to the superior court of the  
31 county in which the unlawful practice exists for a temporary  
32 restraining order or such other relief as appears to be appropriate  
33 under the circumstances.

34       **Sec. 3.** RCW 70.74.160 and 1969 ex.s. c 137 s 19 are each amended  
35 to read as follows:

36       No person, except (~~an official as authorized herein~~) the director  
37 of labor and industries or the director's authorized agent, the owner,

1 the owner's agent, or a person authorized to ((do so by the owner  
2 thereof, or his agent, shall)) enter by the owner or owner's agent, or  
3 a law enforcement officer acting within his or her official capacity,  
4 may enter any explosives manufacturing building, magazine or car,  
5 vehicle or other common carrier containing explosives in this state.  
6 Violation of this section is a gross misdemeanor punishable under  
7 chapter 9A.20 RCW.

8 NEW SECTION. Sec. 4. Unless otherwise allowed to do so under this  
9 chapter, a person who exhibits a device designed, assembled,  
10 fabricated, or manufactured, to convey the appearance of an explosive  
11 or improvised device, and who intends to, and does, intimidate or  
12 harass a person, is guilty of a class C felony.

13 **Sec. 5.** RCW 70.74.191 and 1985 c 191 s 2 are each amended to read  
14 as follows:

15 The laws contained in this chapter and the ensuing regulations  
16 prescribed by the department of labor and industries shall not apply  
17 to:

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

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

26 (3) Explosives in the forms prescribed by the official United  
27 States Pharmacopoeia;

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

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

36 (6) The transportation, storage, and use of explosives or blasting  
37 agents in the normal and emergency avalanche control procedures as

1 conducted by trained and licensed ski area operator personnel.  
2 However, the storage, transportation, and use of explosives and  
3 blasting agents for such use shall meet the requirements of regulations  
4 adopted by the director of labor and industries; and

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

7 **Sec. 6.** RCW 70.74.270 and 1992 c 7 s 49 are each amended to read  
8 as follows:

9 Every person who maliciously places any explosive (~~substance or~~  
10 ~~material~~) or improvised device in, upon, under, against, or near any  
11 building, car, vessel, railroad track, airplane, public utility  
12 transmission system, or structure, in such manner or under such  
13 circumstances as to destroy or injure it if exploded, shall be punished  
14 as follows:

15 (1) If the circumstances and surroundings are such that the safety  
16 of any person might be endangered by the explosion, by imprisonment in  
17 a state correctional facility for not more than twenty years;

18 (2) In every other case by imprisonment in a state correctional  
19 facility for not more than five years.

20 **Sec. 7.** RCW 70.74.295 and 1972 ex.s. c 88 s 3 are each amended to  
21 read as follows:

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

25 NEW SECTION. **Sec. 8.** (1) Explosives, improvised devices, and  
26 components of explosives and improvised devices that are possessed,  
27 manufactured, stored, sold, purchased, transported, abandoned,  
28 detonated, or used in violation of a provision of this chapter are  
29 subject to seizure and forfeiture by a law enforcement agency and no  
30 property right exists in them.

31 (2) Seizure of explosives, improvised devices, and components of  
32 explosives and improvised devices under subsection (1) of this section  
33 may be made if:

34 (a) The seizure is incident to arrest or a search under a search  
35 warrant;

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

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

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

10 (3) A law enforcement agency shall destroy explosives seized under  
11 this chapter when it is necessary to protect the public safety and  
12 welfare. When destruction is not necessary to protect the public  
13 safety and welfare, and the explosives are not being held for evidence,  
14 a seizure pursuant to this section commences proceedings for  
15 forfeiture.

16 (4) The law enforcement agency under whose authority the seizure  
17 was made shall issue a written notice of the seizure and commencement  
18 of the forfeiture proceedings to the person from whom the explosives  
19 were seized, to any known owner of the explosives, and to any person  
20 who has a known interest in the explosives. The notice shall be issued  
21 within fifteen days of the seizure. The notice of seizure and  
22 commencement of the forfeiture proceedings shall be served in the same  
23 manner as provided in RCW 4.28.080 for service of a summons. The law  
24 enforcement agency shall provide a form by which the person or persons  
25 may request a hearing before the law enforcement agency to contest the  
26 seizure.

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

32 (6) If, within thirty days of the issuance of the notice, any  
33 person notifies the seizing law enforcement agency in writing of the  
34 person's claim of ownership or right to possession of items seized, the  
35 person or persons shall be afforded a reasonable opportunity to be  
36 heard as to the claim or right. The hearing shall be before the chief  
37 law enforcement or the officer's designee of the seizing agency, except  
38 that the person asserting the claim or right may remove the matter to  
39 a court of competent jurisdiction if the aggregate value of the items



1 seized is more than five hundred dollars. The hearing and any appeal  
2 shall be conducted according to chapter 34.05 RCW. The seizing law  
3 enforcement agency shall bear the burden of proving that the person (a)  
4 has no lawful right of ownership or possession and (b) that the items  
5 seized were possessed, manufactured, stored, sold, purchased,  
6 transported, abandoned, detonated, or used in violation of a provision  
7 of this chapter with the person's knowledge or consent.

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

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

19 (9) This section is not intended to change the seizure and  
20 forfeiture powers, enforcement, and penalties available to the  
21 department of labor and industries pursuant to chapter 49.17 RCW as  
22 provided in RCW 70.74.390.

23 NEW SECTION. **Sec. 9.** A person who knows of a theft or loss of  
24 explosives for which that person is responsible under this chapter  
25 shall report the theft or loss to the local law enforcement agency  
26 within twenty-four hours of discovery of the theft or loss. The local  
27 law enforcement agency shall immediately report the theft or loss to  
28 the department of labor and industries.

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

31 NEW SECTION. **Sec. 11.** If any provision of this act or its  
32 application to any person or circumstance is held invalid, the  
33 remainder of the act or the application of the provision to other  
34 persons or circumstances is not affected."

1 **SHB 1118** - S COMM AMD  
2 By Committee on Law & Justice

ADOPTED 4/6/93

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

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