

2 **ESHB 1259** - S COMM AMD (S2581.2; 000601)
3 By Committee on Law & Justice

4 ADOPTED AS AMENDED 4/7/93

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

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

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

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

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

20 (c) Found in the possession or under the control of a person at the
21 time the person committed or was arrested for committing a crime of
22 violence or a crime in which a firearm was used or displayed or a
23 felony violation of the uniform controlled substances act, chapter
24 69.50 RCW;

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

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

33 (f) Found in the possession of a person free on bail or personal
34 recognizance pending trial, appeal, or sentencing for a crime of
35 violence or a crime in which a firearm was used or displayed, except

1 that violations of Title 77 RCW shall not result in forfeiture under
2 this section;

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

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

9 (i) Known to have been used in the commission of a crime of
10 violence or a crime in which a firearm was used or displayed or a
11 felony violation of the uniformed controlled substances act, chapter
12 69.50 RCW.

13 (2) Upon order of forfeiture, the court in its discretion shall
14 order destruction of any firearm that is illegal for any person to
15 possess. ~~((All firearms legal for citizen possession that are
16 judicially forfeited or forfeited due to failure to make a claim under
17 RCW 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction
18 to commercial sellers once a year if the submitting agency has
19 accumulated at least ten firearms authorized for sale. Law enforcement
20 agencies may conduct joint auctions for the purpose of maximizing
21 efficiency. A maximum of ten percent of such firearms may be retained
22 for use by local law enforcement agencies and the Washington state
23 patrol. Before submission for auction, a court may temporarily retain
24 forfeited firearms if needed for evidence. The proceeds from any sale
25 shall be divided as follows: The local jurisdiction and the Washington
26 state patrol shall retain its costs, including actual costs of storage
27 and sale, and shall forward the remainder to the state department of
28 wildlife for use in its firearms training program pursuant to RCW
29 77.32.155.~~

30 ~~If a firearm is delivered to a law enforcement agency and the
31 agency no longer requires use of the firearm, the agency shall dispose
32 of the firearm by auction as provided by this subsection. The public
33 auctioning agency shall, as a minimum, maintain a record of all
34 forfeited firearms by manufacturer, model, caliber, serial number, date
35 and circumstances of forfeiture, and final disposition. The records
36 shall be open to public inspection and copying.)) A court may
37 temporarily retain forfeited firearms needed for evidence.~~

38 (a) Except as provided in (b), (c), and (d) of this subsection,
39 firearms that are: (i) Judicially forfeited and no longer needed for

1 evidence; or (ii) forfeited due to a failure to make a claim under RCW
2 63.32.010 or 63.40.010; may be disposed of in any manner determined by
3 the local legislative authority. Any proceeds of an auction or trade
4 may be retained by the legislative authority. This subsection (2)(a)
5 applies only to firearms that come into the possession of the law
6 enforcement agency after June 30, 1993, and applies only if the law
7 enforcement agency has complied with (b) of this subsection.

8 By midnight, June 30, 1993, every law enforcement agency shall
9 prepare an inventory, under oath, of every firearm that has been
10 judicially forfeited, has been seized and may be subject to judicial
11 forfeiture, or that has been, or may be, forfeited due to a failure to
12 make a claim under RCW 63.32.010 or 63.40.010.

13 (b) Except as provided in (c) of this subsection, of the
14 inventoried firearms a law enforcement agency shall destroy illegal
15 firearms, may retain a maximum of ten percent of legal forfeited
16 firearms for agency use, and shall either:

17 (i) Comply with the provisions for the auction of firearms in RCW
18 9.41.098 that were in effect immediately preceding the effective date
19 of this act; or

20 (ii) Trade, auction, or arrange for the auction of, rifles and
21 shotguns. In addition, the law enforcement agency shall either trade,
22 auction, or arrange for the auction of, short firearms, or shall pay a
23 fee of twenty-five dollars to the state treasurer for every short
24 firearm neither auctioned nor traded, to a maximum of fifty thousand
25 dollars. The fees shall be accompanied by an inventory, under oath, of
26 every short firearm listed in the inventory required by (a) of this
27 subsection, that has been neither traded nor auctioned. The state
28 treasurer shall credit the fees to the firearms range account
29 established in RCW 77.12.720. All trades or auctions of firearms under
30 this subsection shall be to commercial sellers. Proceeds of any
31 auction less costs, including actual costs of storage and sale, shall
32 be forwarded to the firearms range account established in RCW
33 77.12.720.

34 (c) Antique firearms as defined by RCW 9.41.150 and firearms
35 recognized as curios, relics, and firearms of particular historical
36 significance by the United States treasury department bureau of
37 alcohol, tobacco, and firearms are exempt from destruction and shall be
38 disposed of by auction or trade to commercial sellers.

1 (d) Firearms in the possession of the Washington state patrol on or
2 after the effective date of this act that are judicially forfeited and
3 no longer needed for evidence, or forfeited due to a failure to make a
4 claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms
5 illegal for any person to possess must be destroyed; (ii) the
6 Washington state patrol may retain a maximum of ten percent of legal
7 firearms for agency use; and (iii) all other legal firearms must be
8 auctioned or traded to commercial sellers. The Washington state patrol
9 may retain any proceeds of an auction or trade.

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

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

24 NEW SECTION. Sec. 2. This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and shall take
27 effect immediately."

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31 On page 1, line 1 of the title, after "firearms;" strike the
32 remainder of the title and insert "amending RCW 9.41.098; and declaring
33 an emergency."

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