
ENGROSSED SUBSTITUTE HOUSE BILL 1259

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Locke, Appelwick, J. Kohl, Wang, Reams, Veloria, Johanson, L. Johnson, Flemming and Pruitt)

Read first time 03/03/93.

1 AN ACT Relating to forfeiture of firearms; and amending RCW
2 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;

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

17 (c) Found in the possession or under the control of a person at the
18 time the person committed or was arrested for committing a crime of
19 violence or a crime in which a firearm was used or displayed or a

1 felony violation of the uniform controlled substances act, chapter
2 69.50 RCW;

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

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

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

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

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

22 (i) Known to have been used in the commission of a crime of
23 violence or a crime in which a firearm was used or displayed or a
24 felony violation of the uniformed controlled substances act, chapter
25 69.50 RCW.

26 (2) Upon order of forfeiture, the court in its discretion shall
27 order destruction of any firearm that is illegal for any person to
28 possess. ~~((All firearms legal for citizen possession that are
29 judicially forfeited or forfeited due to failure to make a claim under
30 RCW 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction
31 to commercial sellers once a year if the submitting agency has
32 accumulated at least ten firearms authorized for sale. Law enforcement
33 agencies may conduct joint auctions for the purpose of maximizing
34 efficiency. A maximum of ten percent of such firearms may be retained
35 for use by local law enforcement agencies and the Washington state
36 patrol. Before submission for auction, a court may temporarily retain
37 forfeited firearms if needed for evidence. The proceeds from any sale
38 shall be divided as follows: The local jurisdiction and the Washington
39 state patrol shall retain its costs, including actual costs of storage~~

1 and sale, and shall forward the remainder to the state department of
2 wildlife for use in its firearms training program pursuant to RCW
3 77.32.155.

4 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 as provided by this subsection. The public
7 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.) A court may
11 temporarily retain forfeited firearms needed for evidence.

12 (a) Except as provided in (b), (c), and (d) of this subsection,
13 firearms that are judicially forfeited or forfeited due to a failure to
14 make a claim under RCW 63.32.010, 63.35.020, or 63.40.010, or that are
15 no longer needed for evidence, may be disposed of in any manner
16 determined by the local legislative authority. Any proceeds of an
17 auction or trade may be retained by the legislative authority. This
18 subsection (2)(a) applies only to firearms that come into the
19 possession of the law enforcement agency after June 30, 1993.

20 By midnight, June 30, 1993, every law enforcement agency shall
21 prepare an inventory, under oath, of every firearm that has been
22 judicially forfeited, has been seized and may be subject to judicial
23 forfeiture, or that has been, or may be, forfeited due to a failure to
24 make a claim under RCW 63.32.010, 63.35.020, or 63.40.010, or that is
25 no longer needed for evidence.

26 (b) Except as provided in (c) of this subsection, for every firearm
27 in the inventory required under (a) of this subsection, a law
28 enforcement agency shall destroy illegal firearms, may retain a maximum
29 of ten percent of legal forfeited firearms for agency use, and shall
30 either:

31 (i) Comply with the provisions for the auction of firearms in RCW
32 9.41.098 that were in effect immediately preceding the effective date
33 of this act; or

34 (ii) Trade, auction, or arrange for the auction of, rifles and
35 shotguns. In addition, the law enforcement agency shall either trade,
36 auction, or arrange for the auction of, short firearms, or shall pay a
37 fee of twenty-five dollars to the state treasurer for every short
38 firearm neither auctioned nor traded, to a maximum of fifty thousand
39 dollars. The fees shall be accompanied by an inventory, under oath, of

1 every short firearm listed in the inventory required by (a) of this
2 subsection, that has been neither traded nor auctioned. The state
3 treasurer shall credit the fees to the firearms range account
4 established in RCW 77.12.720. All trades or auctions of firearms under
5 this subsection shall be to commercial sellers. Proceeds of any
6 auction less costs, including actual costs of storage and sale, shall
7 be forwarded to the firearms range account established in RCW
8 77.12.720.

9 (c) Except as provided in (d) of this subsection, antique firearms
10 as defined by RCW 9.41.150 and firearms recognized as curios, relics,
11 and firearms of particular historical significance by the United States
12 treasury department bureau of alcohol, tobacco, and firearms are exempt
13 from destruction and shall be disposed of by auction or trade to
14 commercial sellers.

15 (d) Firearms in the possession of the Washington state patrol on or
16 after the effective date of this act that are judicially forfeited or
17 forfeited due to a failure to make a claim under RCW 63.32.010,
18 63.35.020, or 63.40.010, and that are no longer needed for evidence,
19 must be disposed of as follows: (i) Firearms illegal for any person to
20 possess must be destroyed; (ii) the Washington state patrol may retain
21 a maximum of ten percent of legal firearms for agency use; and (iii)
22 all other legal firearms must be auctioned to commercial sellers. The
23 Washington state patrol may retain any proceeds of an auction.

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

29 (4) A law enforcement officer of the state or of any county or
30 municipality may confiscate a firearm found to be in the possession of
31 a person under circumstances specified in subsection (1) of this
32 section. After confiscation, the firearm shall not be surrendered
33 except: (a) To the prosecuting attorney for use in subsequent legal
34 proceedings; (b) for disposition according to an order of a court
35 having jurisdiction as provided in subsection (1) of this section; or
36 (c) to the owner if the proceedings are dismissed or as directed in
37 subsection (3) of this section.

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