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HOUSE BILL 1570

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State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives R. Meyers, Brough, Campbell and Kremen

Read first time 02/01/93. Referred to Committee on Judiciary.

1            AN ACT Relating to confiscated firearms; amending RCW 9.41.098;  
2 providing an effective date; and declaring an emergency.

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 judicially  
29 forfeited or forfeited due to failure to make a claim under RCW  
30 63.32.010, 63.40.010, or 63.35.020 and in the custody of a law  
31 enforcement agency on or after the effective date of this act shall be  
32 ~~((submitted for auction to commercial sellers once a year if the~~  
33 ~~submitting agency has accumulated at least ten firearms authorized for~~  
34 ~~sale. Law enforcement agencies may conduct joint auctions for the~~  
35 ~~purpose of maximizing efficiency)) delivered to the Washington state~~  
36 patrol for auction. A maximum of ten percent of such firearms may be  
37 retained for use by local law enforcement agencies and the Washington  
38 state patrol. Before submission for auction, a court may temporarily  
39 retain forfeited firearms if needed for evidence. The Washington state

1 patrol shall auction forfeited firearms in its custody to commercial  
2 sellers at least once a year. The proceeds from any sale shall be  
3 divided as follows: The local jurisdiction and the Washington state  
4 patrol shall retain its costs, including actual costs of storage and  
5 sale, and shall forward seventy-five percent of the remainder to the  
6 Washington state ((department of wildlife for use in its firearms  
7 training program pursuant to RCW 77.32.155)) crime laboratory and  
8 twenty-five percent of the remainder to drug and alcohol programs for  
9 youth.

10 If a firearm is delivered to a law enforcement agency and the  
11 agency no longer requires use of the firearm, the agency shall  
12 ~~((dispose of))~~ deliver the firearm ~~((by auction))~~ to the Washington  
13 state patrol as provided by this subsection. The ~~((public auctioning~~  
14 ~~agency))~~ Washington state patrol shall, as a minimum, maintain a record  
15 of all forfeited firearms by manufacturer, model, caliber, serial  
16 number, date and circumstances of forfeiture, and final disposition.  
17 The records shall be open to public inspection and copying.

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

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

32 NEW SECTION. Sec. 2. This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and shall take  
35 effect July 1, 1993.

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