
HOUSE BILL 2854

State of Washington 58th Legislature 2004 Regular Session

By Representatives Delvin, Lovick, O'Brien, Lantz and Bush

Read first time 01/21/2004. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to seizure, forfeiture, and destruction of
2 explosives; and amending RCW 70.74.400.

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

4 **Sec. 1.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to read
5 as follows:

6 (1) Explosives, improvised devices, and components of explosives
7 and improvised devices that are possessed, manufactured, delivered,
8 imported, exported, stored, sold, purchased, transported, abandoned,
9 detonated, or used, or intended to be used, in violation of a provision
10 of this chapter are subject to seizure and forfeiture by a law
11 enforcement agency and no property right exists in them.

12 (2) The law enforcement agency making the seizure shall notify the
13 Washington state department of labor and industries of the seizure.

14 (3) Seizure of explosives, improvised devices, and components of
15 explosives and improvised devices under subsection (1) of this section
16 may be made if:

17 (a) The seizure is incident to arrest or a search under a search
18 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 (4) A law enforcement agency shall destroy explosives, improvised
11 devices, or components seized under this chapter when it is necessary
12 to protect the public safety and welfare. (~~When destruction is not~~
13 ~~necessary to protect the public safety and welfare, and the explosives~~
14 ~~are not being held for evidence, a seizure pursuant to this section~~
15 ~~commences proceedings for forfeiture.)) A law enforcement agency may
16 destroy explosives, improvised devices, or components seized under this
17 chapter when the agency determines that it is impractical or unsafe to
18 store the explosives, improvised devices, or components. The law
19 enforcement agency must film, videotape, or make a similar record of
20 any destruction authorized by this section. The law enforcement agency
21 must photograph, videotape, or make a similar record of the explosives,
22 improvised devices, or components destroyed, and keep samples where
23 practicable. The law enforcement agency must make a report listing the
24 explosives, improvised devices, and components destroyed, and the time,
25 location, and reason for destruction. Any such reports, records, or
26 samples shall be admissible as evidence in lieu of the explosives,
27 improvised devices, or components destroyed. When destruction is not
28 appropriate, and the explosives, improvised devices, or components are
29 not being held for evidence, a seizure pursuant to this section
30 commences proceedings for forfeiture.~~

31 (5) The law enforcement agency under whose authority the seizure
32 was made shall issue a written notice of the seizure and commencement
33 of the forfeiture proceedings to the person from whom the explosives
34 were seized, to any known owner of the explosives, and to any person
35 who has a known interest in the explosives. The notice shall be issued
36 within fifteen days of the seizure. The notice of seizure and
37 commencement of the forfeiture proceedings shall be served in the same
38 manner as provided in RCW 4.28.080 for service of a summons. The law

1 enforcement agency shall provide a form by which the person or persons
2 may request a hearing before the law enforcement agency to contest the
3 seizure.

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

9 (7) If, within thirty days of the issuance of the notice, any
10 person notifies the seizing law enforcement agency in writing of the
11 person's claim of ownership or right to possession of items seized, the
12 person or persons shall be afforded a reasonable opportunity to be
13 heard as to the claim or right. The hearing shall be before the chief
14 law enforcement or the officer's designee of the seizing agency, except
15 that the person asserting the claim or right may remove the matter to
16 a court of competent jurisdiction if the aggregate value of the items
17 seized is more than five hundred dollars. The hearing and any appeal
18 shall be conducted according to chapter 34.05 RCW. The seizing law
19 enforcement agency shall bear the burden of proving that the person (a)
20 has no lawful right of ownership or possession and (b) that the items
21 seized were possessed, manufactured, stored, sold, purchased,
22 transported, abandoned, detonated, or used in violation of a provision
23 of this chapter with the person's knowledge or consent.

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

27 (9) If the items seized are forfeited under this statute, the
28 seizing agency shall dispose of the explosives by summary destruction.
29 However, when explosives are destroyed (~~either to protect public~~
30 ~~safety or because the explosives were forfeited~~), the person from whom
31 the explosives were seized loses all rights of action against the law
32 enforcement agency or its employees acting within the scope of their
33 employment, or other governmental entity or employee involved with the
34 seizure and destruction of explosives.

35 (10) This section is not intended to change the seizure and
36 forfeiture powers, enforcement, and penalties available to the

1 department of labor and industries pursuant to chapter 49.17 RCW as
2 provided in RCW 70.74.390.

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