
SENATE BILL 5131

State of Washington

53rd Legislature

1993 Regular Session

By Senators Wojahn, Gaspard, Moyer, Prentice, A. Smith, Spanel, Deccio, Haugen, Quigley, Pelz and Talmadge

Read first time 01/14/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to firearms; amending RCW 9.41.098; and reenacting
2 and amending RCW 9.41.010.

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

4 **Sec. 1.** RCW 9.41.010 and 1992 c 205 s 117 and 1992 c 145 s 5 are
5 each reenacted and amended to read as follows:

6 (1) "Short firearm" or "pistol" as used in this chapter means any
7 firearm with a barrel less than twelve inches in length.

8 (2) "Crime of violence" as used in this chapter means:

9 (a) Any of the following felonies, as now existing or hereafter
10 amended: Any felony defined under any law as a class A felony or an
11 attempt to commit a class A felony, criminal solicitation of or
12 criminal conspiracy to commit a class A felony, manslaughter in the
13 first degree, manslaughter in the second degree, indecent liberties if
14 committed by forcible compulsion, rape in the second degree, kidnapping
15 in the second degree, arson in the second degree, assault in the second
16 degree, assault of a child in the second degree, extortion in the first
17 degree, burglary in the second degree, and robbery in the second
18 degree;

1 (b) Any conviction or adjudication for a felony offense in effect
2 at any time prior to July 1, 1976, which is comparable to a felony
3 classified as a crime of violence in subsection (2)(a) of this section;
4 and

5 (c) Any federal or out-of-state conviction or adjudication for an
6 offense comparable to a felony classified as a crime of violence under
7 subsection (2) (a) or (b) of this section.

8 (3) "Firearm" as used in this chapter means a weapon or device from
9 which a projectile may be fired by an explosive such as gunpowder.

10 (4) "Antique firearm" as used in this chapter means any firearm
11 manufactured on or before 1918.

12 (5) "Commercial seller" as used in this chapter means a person who
13 has a federal firearms license.

14 **Sec. 2.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
15 as follows:

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

18 (a) Found concealed on a person not authorized by RCW 9.41.060 or
19 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
20 defense to forfeiture if the person possessed a valid Washington
21 concealed pistol license within the preceding two years and has not
22 become ineligible for a concealed pistol license in the interim.
23 Before the firearm may be returned, the person must pay the past due
24 renewal fee and the current renewal fee;

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

27 (c) Found in the possession or under the control of a person at the
28 time the person committed or was arrested for committing a crime of
29 violence or a crime in which a firearm was used or displayed or a
30 felony violation of the uniform controlled substances act, chapter
31 69.50 RCW;

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

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

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

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

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

14 (i) Known to have been used in the commission of a crime of
15 violence or a crime in which a firearm was used or displayed or a
16 felony violation of the uniformed controlled substances act, chapter
17 69.50 RCW.

18 (2)(a) Upon order of forfeiture, the court in its discretion shall
19 order destruction of any firearm that is illegal for any person to
20 possess. All firearms legal for citizen possession that are judicially
21 forfeited or forfeited due to failure to make a claim under RCW
22 63.32.010, 63.40.010, or 63.35.020 (~~shall~~) may be submitted for
23 auction to commercial sellers once a year if the submitting agency has
24 accumulated at least ten firearms authorized for sale. Law enforcement
25 agencies may conduct joint auctions for the purpose of maximizing
26 efficiency. A maximum of ten percent of such firearms may be retained
27 for use by local law enforcement agencies and the Washington state
28 patrol. Before submission for auction, trade, or destruction, a court
29 may temporarily retain forfeited firearms if needed for evidence.

30 (i) The proceeds from any sale shall be divided as follows: ((The
31 local jurisdiction and the Washington state patrol shall retain its
32 costs, including actual costs of storage and sale, and shall forward
33 the remainder to the state department of wildlife for use in its
34 firearms training program pursuant to RCW 77.32.155)) The agency
35 submitting the surplus firearms for sale may retain sixty percent of
36 the total proceeds from the sale of the firearms, to be used by the
37 agency exclusively for law enforcement purposes. Forty percent of the
38 total proceeds shall go to the firearms range account. All costs

1 incurred in selling the surplus firearms shall be paid from the portion
2 retained by the law enforcement agency; or

3 (ii) In lieu of selling surplus firearms at auction a law
4 enforcement agency may trade the surplus firearms to a commercial
5 seller in exchange for departmental service weapons or other firearms
6 or police equipment, to be used by the agency exclusively for law
7 enforcement purposes. If surplus firearms are exchanged for the
8 described equipment, the value of the equipment shall not be subject to
9 division under (a)(i) of this subsection.

10 (b) If a local government chooses to destroy such firearms the
11 local government shall enact an ordinance providing for the destruction
12 of such firearms. Antique firearms are exempted from destruction.

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

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

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

34 (5) This section shall apply to all forfeited firearms in the
35 possession of a law enforcement agency, regardless of when the firearms
36 came into the possession of the law enforcement agency.

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