
HOUSE BILL 1148

State of Washington

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By Representatives Lantz, Carrell, O'Brien, Lovick, Ballasiotes,
McDermott and Esser

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1 AN ACT Relating to unwitting possession of a firearm; and amending
2 RCW 9.41.040, 9.41.070, and 46.20.265.

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

4 **Sec. 1.** RCW 9.41.040 and 1997 c 338 s 47 are each amended to read
5 as follows:

6 (1)(a) A person, whether an adult or juvenile, is guilty of the
7 crime of unlawful possession of a firearm in the first degree, if the
8 person owns, has in his or her possession, or has in his or her control
9 any firearm after having previously been convicted in this state or
10 elsewhere of any serious offense as defined in this chapter.

11 (b) A person, whether an adult or juvenile, is guilty of the crime
12 of unlawful possession of a firearm in the second degree, if the person
13 does not qualify under (a) of this subsection for the crime of unlawful
14 possession of a firearm in the first degree and the person owns, has in
15 his or her possession, or has in his or her control any firearm:

16 (i) After having previously been convicted in this state or
17 elsewhere of any felony not specifically listed as prohibiting firearm
18 possession under (a) of this subsection, or any of the following crimes
19 when committed by one family or household member against another,

1 committed on or after July 1, 1993: Assault in the fourth degree,
2 coercion, stalking, reckless endangerment, criminal trespass in the
3 first degree, or violation of the provisions of a protection order or
4 no-contact order restraining the person or excluding the person from a
5 residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

6 (ii) After having previously been involuntarily committed for
7 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
8 RCW, or equivalent statutes of another jurisdiction, unless his or her
9 right to possess a firearm has been restored as provided in RCW
10 9.41.047;

11 (iii) If the person is under eighteen years of age, except as
12 provided in RCW 9.41.042; and/or

13 (iv) If the person is free on bond or personal recognizance pending
14 trial, appeal, or sentencing for a serious offense as defined in RCW
15 9.41.010.

16 (2)(a) Unlawful possession of a firearm in the first degree is a
17 class B felony, punishable under chapter 9A.20 RCW.

18 (b) Unlawful possession of a firearm in the second degree is a
19 class C felony, punishable under chapter 9A.20 RCW.

20 (3) Knowledge is not an element of the crime of unlawful possession
21 of a firearm in the first or second degree. Unwitting possession is an
22 affirmative defense to a charge of unlawful possession of a firearm in
23 the first or second degree. The defendant must establish the defense
24 of unwitting possession by a preponderance of the evidence.

25 (4) Notwithstanding RCW 9.41.047 or any other provisions of law, as
26 used in this chapter, a person has been "convicted", whether in an
27 adult court or adjudicated in a juvenile court, at such time as a plea
28 of guilty has been accepted, or a verdict of guilty has been filed,
29 notwithstanding the pendency of any future proceedings including but
30 not limited to sentencing or disposition, post-trial or post-
31 factfinding motions, and appeals. Conviction includes a dismissal
32 entered after a period of probation, suspension or deferral of
33 sentence, and also includes equivalent dispositions by courts in
34 jurisdictions other than Washington state. A person shall not be
35 precluded from possession of a firearm if the conviction has been the
36 subject of a pardon, annulment, certificate of rehabilitation, or other
37 equivalent procedure based on a finding of the rehabilitation of the
38 person convicted or the conviction or disposition has been the subject
39 of a pardon, annulment, or other equivalent procedure based on a

1 finding of innocence. Where no record of the court's disposition of
2 the charges can be found, there shall be a rebuttable presumption that
3 the person was not convicted of the charge.

4 ~~((+4))~~ (5) Notwithstanding subsection (1) of this section, a
5 person convicted of an offense prohibiting the possession of a firearm
6 under this section other than murder, manslaughter, robbery, rape,
7 indecent liberties, arson, assault, kidnapping, extortion, burglary, or
8 violations with respect to controlled substances under RCW 69.50.401(a)
9 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
10 and who received a dismissal of the charge under RCW 9.95.240, shall
11 not be precluded from possession of a firearm as a result of the
12 conviction. Notwithstanding any other provisions of this section, if
13 a person is prohibited from possession of a firearm under subsection
14 (1) of this section and has not previously been convicted of a sex
15 offense prohibiting firearm ownership under subsection (1) of this
16 section and/or any felony defined under any law as a class A felony or
17 with a maximum sentence of at least twenty years, or both, the
18 individual may petition a court of record to have his or her right to
19 possess a firearm restored:

20 (a) Under RCW 9.41.047; and/or

21 (b)(i) If the conviction was for a felony offense, after five or
22 more consecutive years in the community without being convicted or
23 currently charged with any felony, gross misdemeanor, or misdemeanor
24 crimes, if the individual has no prior felony convictions that prohibit
25 the possession of a firearm counted as part of the offender score under
26 RCW 9.94A.360; or

27 (ii) If the conviction was for a nonfelony offense, after three or
28 more consecutive years in the community without being convicted or
29 currently charged with any felony, gross misdemeanor, or misdemeanor
30 crimes, if the individual has no prior felony convictions that prohibit
31 the possession of a firearm counted as part of the offender score under
32 RCW 9.94A.360 and the individual has completed all conditions of the
33 sentence.

34 ~~((+5))~~ (6) In addition to any other penalty provided for by law,
35 if a person under the age of eighteen years is found by a court to have
36 possessed a firearm in a vehicle in violation of subsection (1) of this
37 section or to have committed an offense while armed with a firearm
38 during which offense a motor vehicle served an integral function, the
39 court shall notify the department of licensing within twenty-four hours

1 and the person's privilege to drive shall be revoked under RCW
2 46.20.265.

3 ~~((6))~~ (7) Nothing in chapter 129, Laws of 1995 shall ever be
4 construed or interpreted as preventing an offender from being charged
5 and subsequently convicted for the separate felony crimes of theft of
6 a firearm or possession of a stolen firearm, or both, in addition to
7 being charged and subsequently convicted under this section for
8 unlawful possession of a firearm in the first or second degree.
9 Notwithstanding any other law, if the offender is convicted under this
10 section for unlawful possession of a firearm in the first or second
11 degree and for the felony crimes of theft of a firearm or possession of
12 a stolen firearm, or both, then the offender shall serve consecutive
13 sentences for each of the felony crimes of conviction listed in this
14 subsection.

15 ~~((7))~~ (8) Each firearm unlawfully possessed under this section
16 shall be a separate offense.

17 **Sec. 2.** RCW 9.41.070 and 1999 c 222 s 2 are each amended to read
18 as follows:

19 (1) The chief of police of a municipality or the sheriff of a
20 county shall within thirty days after the filing of an application of
21 any person, issue a license to such person to carry a pistol concealed
22 on his or her person within this state for five years from date of
23 issue, for the purposes of protection or while engaged in business,
24 sport, or while traveling. However, if the applicant does not have a
25 valid permanent Washington driver's license or Washington state
26 identification card or has not been a resident of the state for the
27 previous consecutive ninety days, the issuing authority shall have up
28 to sixty days after the filing of the application to issue a license.
29 The issuing authority shall not refuse to accept completed applications
30 for concealed pistol licenses during regular business hours.

31 The applicant's constitutional right to bear arms shall not be
32 denied, unless:

33 (a) He or she is ineligible to possess a firearm under the
34 provisions of RCW 9.41.040 or 9.41.045;

35 (b) The applicant's concealed pistol license is in a revoked
36 status;

37 (c) He or she is under twenty-one years of age;

1 (d) He or she is subject to a court order or injunction regarding
2 firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
3 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137,
4 26.50.060, or 26.50.070;

5 (e) He or she is free on bond or personal recognizance pending
6 trial, appeal, or sentencing for a felony offense;

7 (f) He or she has an outstanding warrant for his or her arrest from
8 any court of competent jurisdiction for a felony or misdemeanor; or

9 (g) He or she has been ordered to forfeit a firearm under RCW
10 9.41.098(1)(e) within one year before filing an application to carry a
11 pistol concealed on his or her person.

12 No person convicted of a felony may have his or her right to
13 possess firearms restored or his or her privilege to carry a concealed
14 pistol restored, unless the person has been granted relief from
15 disabilities by the secretary of the treasury under 18 U.S.C. Sec.
16 925(c), or RCW 9.41.040 (~~((3) or~~) (4) or (5) applies.

17 (2) The issuing authority shall check with the national crime
18 information center, the Washington state patrol electronic data base,
19 the department of social and health services electronic data base, and
20 with other agencies or resources as appropriate, to determine whether
21 the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess
22 a firearm and therefore ineligible for a concealed pistol license.
23 This subsection applies whether the applicant is applying for a new
24 concealed pistol license or to renew a concealed pistol license.

25 (3) Any person whose firearms rights have been restricted and who
26 has been granted relief from disabilities by the secretary of the
27 treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C.
28 Sec. 921(a)(20)(A) shall have his or her right to acquire, receive,
29 transfer, ship, transport, carry, and possess firearms in accordance
30 with Washington state law restored except as otherwise prohibited by
31 this chapter.

32 (4) The license application shall bear the full name, residential
33 address, telephone number at the option of the applicant, date and
34 place of birth, race, gender, description, not more than two complete
35 sets of fingerprints, and signature of the licensee, and the licensee's
36 driver's license number or state identification card number if used for
37 identification in applying for the license. A signed application for
38 a concealed pistol license shall constitute a waiver of confidentiality
39 and written request that the department of social and health services,

1 mental health institutions, and other health care facilities release
2 information relevant to the applicant's eligibility for a concealed
3 pistol license to an inquiring court or law enforcement agency.

4 The application for an original license shall include two complete
5 sets of fingerprints to be forwarded to the Washington state patrol.

6 The license and application shall contain a warning substantially
7 as follows:

8 CAUTION: Although state and local laws do not differ, federal
9 law and state law on the possession of firearms differ. If you
10 are prohibited by federal law from possessing a firearm, you
11 may be prosecuted in federal court. A state license is not a
12 defense to a federal prosecution.

13 The license shall contain a description of the major differences
14 between state and federal law and an explanation of the fact that local
15 laws and ordinances on firearms are preempted by state law and must be
16 consistent with state law. The application shall contain questions
17 about the applicant's eligibility under RCW 9.41.040 to possess a
18 pistol, the applicant's place of birth, and whether the applicant is a
19 United States citizen. The applicant shall not be required to produce
20 a birth certificate or other evidence of citizenship. A person who is
21 not a citizen of the United States shall meet the additional
22 requirements of RCW 9.41.170 and produce proof of compliance with RCW
23 9.41.170 upon application. The license shall be in triplicate and in
24 a form to be prescribed by the department of licensing.

25 The original thereof shall be delivered to the licensee, the
26 duplicate shall within seven days be sent to the director of licensing
27 and the triplicate shall be preserved for six years, by the authority
28 issuing the license.

29 The department of licensing shall make available to law enforcement
30 and corrections agencies, in an on-line format, all information
31 received under this subsection.

32 (5) The nonrefundable fee, paid upon application, for the original
33 five-year license shall be thirty-six dollars plus additional charges
34 imposed by the Federal Bureau of Investigation that are passed on to
35 the applicant. No other state or local branch or unit of government
36 may impose any additional charges on the applicant for the issuance of
37 the license.

38 The fee shall be distributed as follows:

1 (a) Fifteen dollars shall be paid to the state general fund;
2 (b) Four dollars shall be paid to the agency taking the
3 fingerprints of the person licensed;
4 (c) Fourteen dollars shall be paid to the issuing authority for the
5 purpose of enforcing this chapter; and
6 (d) Three dollars to the firearms range account in the general
7 fund.
8 (6) The nonrefundable fee for the renewal of such license shall be
9 thirty-two dollars. No other branch or unit of government may impose
10 any additional charges on the applicant for the renewal of the license.
11 The renewal fee shall be distributed as follows:
12 (a) Fifteen dollars shall be paid to the state general fund;
13 (b) Fourteen dollars shall be paid to the issuing authority for the
14 purpose of enforcing this chapter; and
15 (c) Three dollars to the firearms range account in the general
16 fund.
17 (7) The nonrefundable fee for replacement of lost or damaged
18 licenses is ten dollars to be paid to the issuing authority.
19 (8) Payment shall be by cash, check, or money order at the option
20 of the applicant. Additional methods of payment may be allowed at the
21 option of the issuing authority.
22 (9) A licensee may renew a license if the licensee applies for
23 renewal within ninety days before or after the expiration date of the
24 license. A license so renewed shall take effect on the expiration date
25 of the prior license. A licensee renewing after the expiration date of
26 the license must pay a late renewal penalty of ten dollars in addition
27 to the renewal fee specified in subsection (6) of this section. The
28 fee shall be distributed as follows:
29 (a) Three dollars shall be deposited in the state wildlife fund and
30 used exclusively first for the printing and distribution of a pamphlet
31 on the legal limits of the use of firearms, firearms safety, and the
32 preemptive nature of state law, and subsequently the support of
33 volunteer instructors in the basic firearms safety training program
34 conducted by the department of fish and wildlife. The pamphlet shall
35 be given to each applicant for a license; and
36 (b) Seven dollars shall be paid to the issuing authority for the
37 purpose of enforcing this chapter.
38 (10) Notwithstanding the requirements of subsections (1) through
39 (9) of this section, the chief of police of the municipality or the

1 sheriff of the county of the applicant's residence may issue a
2 temporary emergency license for good cause pending review under
3 subsection (1) of this section. However, a temporary emergency license
4 issued under this subsection shall not exempt the holder of the license
5 from any records check requirement. Temporary emergency licenses shall
6 be easily distinguishable from regular licenses.

7 (11) A political subdivision of the state shall not modify the
8 requirements of this section or chapter, nor may a political
9 subdivision ask the applicant to voluntarily submit any information not
10 required by this section.

11 (12) A person who knowingly makes a false statement regarding
12 citizenship or identity on an application for a concealed pistol
13 license is guilty of false swearing under RCW 9A.72.040. In addition
14 to any other penalty provided for by law, the concealed pistol license
15 of a person who knowingly makes a false statement shall be revoked, and
16 the person shall be permanently ineligible for a concealed pistol
17 license.

18 (13) A person may apply for a concealed pistol license:

19 (a) To the municipality or to the county in which the applicant
20 resides if the applicant resides in a municipality;

21 (b) To the county in which the applicant resides if the applicant
22 resides in an unincorporated area; or

23 (c) Anywhere in the state if the applicant is a nonresident.

24 **Sec. 3.** RCW 46.20.265 and 1998 c 41 s 2 are each amended to read
25 as follows:

26 (1) In addition to any other authority to revoke driving privileges
27 under this chapter, the department shall revoke all driving privileges
28 of a juvenile when the department receives notice from a court pursuant
29 to RCW 9.41.040(~~(+5)~~) (6), 13.40.265, 66.44.365, 69.41.065, 69.50.420,
30 69.52.070, or a substantially similar municipal ordinance adopted by a
31 local legislative authority, or from a diversion unit pursuant to RCW
32 13.40.265. The revocation shall be imposed without hearing.

33 (2) The driving privileges of the juvenile revoked under subsection
34 (1) of this section shall be revoked in the following manner:

35 (a) Upon receipt of the first notice, the department shall impose
36 a revocation for one year, or until the juvenile reaches seventeen
37 years of age, whichever is longer.

1 (b) Upon receipt of a second or subsequent notice, the department
2 shall impose a revocation for two years or until the juvenile reaches
3 eighteen years of age, whichever is longer.

4 (c) Each offense for which the department receives notice shall
5 result in a separate period of revocation. All periods of revocation
6 imposed under this section that could otherwise overlap shall run
7 consecutively and no period of revocation imposed under this section
8 shall begin before the expiration of all other periods of revocation
9 imposed under this section or other law.

10 (3) If the department receives notice from a court that the
11 juvenile's privilege to drive should be reinstated, the department
12 shall immediately reinstate any driving privileges that have been
13 revoked under this section if the minimum term of revocation as
14 specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3),
15 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and
16 subject to subsection (2)(c) of this section.

17 (4)(a) If the department receives notice pursuant to RCW
18 13.40.265(2)(b) from a diversion unit that a juvenile has completed a
19 diversion agreement for which the juvenile's driving privileges were
20 revoked, the department shall reinstate any driving privileges revoked
21 under this section as provided in (b) of this subsection, subject to
22 subsection (2)(c) of this section.

23 (b) If the diversion agreement was for the juvenile's first
24 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
25 shall not reinstate the juvenile's privilege to drive until the later
26 of ninety days after the date the juvenile turns sixteen or ninety days
27 after the juvenile entered into a diversion agreement for the offense.
28 If the diversion agreement was for the juvenile's second or subsequent
29 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
30 shall not reinstate the juvenile's privilege to drive until the later
31 of the date the juvenile turns seventeen or one year after the juvenile
32 entered into the second or subsequent diversion agreement.

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