

FINAL BILL REPORT

SHB 1118

Synopsis as Enacted

C 293 L 93

Brief Description: Classifying the criminal use of explosives.

By House Committee on Judiciary (originally sponsored by Representatives Orr, Scott, Shin, Dunshee, Silver, Mielke, Schoesler, Sheahan, Riley, Tate, Vance, Chappell, Ludwig, Forner, H. Myers, Johanson and Springer).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The Washington State Explosives Act governs the possession and use of explosives. The Department of Labor and Industries approves the use of explosives. No person may manufacture, possess, store, sell, purchase, transport, or use explosives unless licensed by the department. Certain exemptions exist.

DEFINITIONS

The act defines explosives. Small arms ammunition and primers, smokeless powder less than 50 pounds, and black powder less than five pounds are not explosives within the meaning of the act, regardless of their intended use.

There is no definition of improvised devices that may contain explosives or other noxious agents such as gases.

AUTHORIZED PERSONS

No person except "an official as authorized herein" may enter any explosives manufacturing building, magazine, or car, vehicle, or other common carrier carrying explosives. An "official as authorized herein" is undefined.

PENALTIES

It is a felony to possess shells, bombs, or similar devices with the intent to use them for an unlawful purpose. However, some prosecutors reportedly have declined to prosecute offenders in possession of explosive devices or components, because of a lack of proof of the intent to use the devices or components for an illegal purpose.

It is a gross misdemeanor to manufacture, purchase, sell, use, or store any explosive without a license from the Department of Labor and Industries.

While it is unlawful for a person to abandon explosives or explosive substances, no penalty is specified.

Also, no penalty is provided for illegal entry into an area where explosives are located.

EXEMPTIONS

The chapter does not apply to the sale and use of fireworks, signalling devices, flares, fuses, and torpedoes. This exemption does not include the "importation" or "possession" of those items.

OTHER PROVISIONS

While the act does address the immediate surrender of explosives, it does not explicitly provide for the seizure, destruction, or forfeiture of explosives. Nor does it require the reporting of lost or stolen explosives.

Summary: The definition of "explosives" is expanded. The Washington State Explosives Act is amended in several ways.

DEFINITIONS

Small arms ammunition and primers, smokeless powder less than 50 pounds, and black powder less than five pounds are explosives if possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

A new definition is added. The term "improvised device" means a device that is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals, and is designed to disfigure, destroy, distract, or harass. The term is added throughout the Washington State Explosives Act.

AUTHORIZED PERSONS

Who has authority to enter manufacturing buildings, magazines, and vehicles containing explosives is clarified. No person, except the director of the Department of Labor and Industries or the director's agent, the owner, the owner's agent, any person the owner or the owner's agent permits to enter, or a law enforcement officer acting within his or her official capacity may enter any building, magazine, or vehicle that contains explosives.

PENALTIES

A new offense is created. Unless otherwise allowed by the Washington State Explosives Act, a person who exhibits a device designed, assembled, fabricated or manufactured to convey the appearance of an explosive or improvised device, and who intends to and does intimidate or harass a person, is guilty of a class C felony.

In addition to current restrictions on manufacture, purchase, sale, use, or storage of explosives, a person may not offer for sale, possess or transport an explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device, without a license. Violation of the provision is changed from a gross misdemeanor to a class C felony.

Unlawful abandonment of explosives or improvised devices is a gross misdemeanor. The term "explosive substances" is stricken.

Illegal entry into a building, magazine, or vehicle containing explosives is a gross misdemeanor.

EXEMPTIONS

The provisions of the chapter do not apply to the importation, sale, possession or use of fireworks, signalling devices, flares, fuses, or torpedoes.

OTHER PROVISIONS

Seizure, destruction, or forfeiture: Explosives, improvised devices, and components possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of the Washington State Explosives Act are subject to seizure and forfeiture by a law enforcement agency.

Explosives, improvised devices and components may be seized if:

- (1) the seizure is incident to arrest or a search under a search warrant;
- (2) they were the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based on the act;
- (3) there is probable cause to believe they are dangerous to health or safety; or

- (4) there is probable cause to believe they were used or were intended to be used in violation of the act.

A law enforcement agency must destroy seized explosives if necessary for the public safety and welfare. Otherwise, and if the explosives are not being held for evidence, the seizure commences forfeiture proceedings.

The seizing law enforcement agency must follow specified procedures in forfeiture proceedings, including procedures for notice to any person with a known interest in the explosives. Notice must be given by personal service.

Anyone with a claim to the explosives is entitled to a hearing to challenge the forfeiture action, and may have the matter heard by a court if the value of the explosives exceeds \$500. The seizing law enforcement agency bears the burden of proof.

A law enforcement agency must destroy forfeited explosives. When explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized has no claim against any governmental entity, agency, or employee acting within the scope of his or her employment, involved in the seizure or destruction.

The act's seizure, forfeiture, and destruction provisions are not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the Department of Labor and Industries under the Washington Industrial Safety and Health Act.

Loss or theft of explosives: A person who is responsible for explosives must report theft or loss of the explosives within 24 hours of discovery to the local law enforcement agency. The law enforcement agency must immediately report the theft or loss to the Department of Labor and Industries.

Technical changes: The bill makes additional changes, of a technical nature, in the act.

Votes on Final Passage:

House	98	0	
Senate	48	0	(Senate amended)
House	97	0	(House concurred)

Effective: July 25, 1993