
HOUSE BILL 1259

State of Washington

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1993 Regular Session

By Representatives Locke, Appelwick, J. Kohl, Wang, Reams, Veloria, Johanson, L. Johnson, Flemming and Pruitt

Read first time 01/20/93. Referred to Committee on Judiciary.

1 AN ACT Relating to forfeiture of firearms; and amending RCW
2 9.41.098.

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))~~ law enforcement agency that seized the firearm may
29 arrange for its destruction. Firearms legal for citizen possession
30 that are judicially forfeited or forfeited due to failure to make a
31 claim under RCW 63.32.010, 63.40.010, or 63.35.020 ~~((shall))~~ may 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. A maximum of ten percent of such
36 firearms may be retained for use by local law enforcement agencies and
37 the Washington state patrol. Before submission for destruction or
38 auction, a court may temporarily retain forfeited firearms if needed
39 for evidence. The proceeds from any sale shall be divided as follows:

1 The local jurisdiction and the Washington state patrol shall retain its
2 costs, including actual costs of storage and sale, and shall forward
3 the remainder to the state department of wildlife for use in its
4 firearms training program pursuant to RCW 77.32.155.

5 If a firearm is delivered to a law enforcement agency and the
6 agency no longer requires use of the firearm, the agency (~~shall~~) may
7 arrange for its destruction or may dispose of the firearm by auction as
8 provided by this subsection. The public auctioning agency shall, as a
9 minimum, maintain a record of all forfeited firearms by manufacturer,
10 model, caliber, serial number, date and circumstances of forfeiture,
11 and final disposition. The records shall be open to public inspection
12 and copying.

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

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

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