
ENGROSSED SUBSTITUTE SENATE BILL 5131

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Wojahn, Gaspard, Moyer, Prentice, A. Smith, Spanel, Deccio, Haugen, Quigley, Pelz and Talmadge)

Read first time 02/10/93.

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 firearms legal for citizen possession that are
29 judicially forfeited or forfeited due to failure to make a claim under
30 RCW 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction
31 to commercial sellers once a year if the submitting agency has
32 accumulated at least ten firearms authorized for sale. Law enforcement
33 agencies may conduct joint auctions for the purpose of maximizing
34 efficiency. A maximum of ten percent of such firearms may be retained
35 for use by local law enforcement agencies and the Washington state
36 patrol. Before submission for auction, a court may temporarily retain
37 forfeited firearms if needed for evidence. The proceeds from any sale
38 shall be divided as follows: The local jurisdiction and the Washington
39 state patrol shall retain its costs, including actual costs of storage~~

1 and sale, and shall forward the remainder to the state department of
2 wildlife for use in its firearms training program pursuant to RCW
3 77.32.155.

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

12 (a) Except as provided in (b), (c), and (d) of this subsection,
13 firearms that are judicially forfeited or forfeited due to a failure to
14 make a claim under RCW 63.32.010, 63.35.020, or 63.40.010, or that are
15 no longer needed for evidence, may be disposed of in any manner
16 determined by the local legislative authority. Any proceeds of an
17 auction or trade may be retained by the legislative authority. This
18 subsection (2)(a) applies only to firearms that come into the
19 possession of the law enforcement agency after June 30, 1993.

20 By midnight, June 30, 1993, every law enforcement agency shall
21 prepare an inventory, under oath, of every firearm that has been
22 judicially forfeited, has been seized and may be subject to judicial
23 forfeiture, or that has been, or may be, forfeited due to a failure to
24 make a claim under RCW 63.32.010, 63.35.020, or 63.40.010, or that is
25 no longer needed for evidence.

26 (b) Firearms in the possession of the Washington state patrol on or
27 after the effective date of this act that are judicially forfeited or
28 forfeited due to a failure to make a claim under RCW 63.32.010,
29 63.35.020, or 63.40.010, and that are no longer needed for evidence,
30 must be disposed of as follows: (i) Firearms illegal for a person to
31 possess must be destroyed; (ii) a maximum of ten percent of legal
32 firearms may be retained for agency use; and (iii) all other legal
33 firearms must be auctioned or traded to commercial sellers. The
34 Washington state patrol may retain proceeds of an auction or trade.

35 (c) Except as provided in (d) of this subsection, for every firearm
36 in the inventory required under (a) of this subsection, a law
37 enforcement agency shall destroy illegal firearms, may retain a maximum
38 of ten percent of legal forfeited firearms for agency use, and shall
39 either:

1 (i) Comply with the provisions for the auction of firearms in RCW
2 9.41.098 that were in effect immediately preceding the effective date
3 of this act; or

4 (ii) Trade, auction, or arrange for the auction of, rifles and
5 shotguns. In addition, the law enforcement agency shall either trade,
6 auction, or arrange for the auction of, short firearms, or shall pay a
7 fee of twenty-five dollars to the state treasurer for every short
8 firearm neither auctioned nor traded, to a maximum of fifty thousand
9 dollars. The fees shall be accompanied by an inventory, under oath, of
10 every short firearm listed in the inventory required by (a) of this
11 subsection, that has been neither traded nor auctioned. The state
12 treasurer shall credit the fees to the firearms range account
13 established in RCW 77.12.720. All trades or auctions of firearms under
14 this subsection shall be to commercial sellers. Proceeds of any
15 auction less costs, including actual costs of storage and sale, shall
16 be forwarded to the firearms range account established in RCW
17 77.12.720.

18 (d) Antique firearms as defined by RCW 9.41.150 and firearms
19 recognized as curios, relics, and firearms of particular historical
20 significance by the United States treasury department bureau of
21 alcohol, tobacco, and firearms are exempt from destruction and shall be
22 disposed of by auction or trade to commercial sellers.

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

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

--- END ---