

HOUSE BILL REPORT

ESSB 6153

*As Reported By House Committee on:
Judiciary*

Title: An act relating to the unlawful use of explosives.

Brief Description: Classifying the criminal use of explosives.

Sponsor(s): Senate Committee on Law & Justice (originally sponsored by Senators Amondson, Rasmussen, A. Smith, Thorsness, Hayner, Nelson, Gaspard, Erwin, M. Kreidler and Jesernig).

Brief History:

Reported by House Committee on:
Judiciary, February 28, 1992, DPA.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background:

The Washington State Explosives Act regulates 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 apply. Violation is a gross misdemeanor. A purchaser's license costs between \$5 and \$15.

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.

Explosives are classified under the act. Class A explosives include among other items, "picric acid, lead azide, and fulminate of mercury." Potentially other chemicals exist that may be commonly used to create explosives, but those chemicals are not specifically referenced in the definition of class A explosives.

The definition section of the act does not contain a definition for devices that may be constructed which contain explosives, such as homemade pipe bombs, 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 carrier carrying explosives. No penalty is provided for a violation. The term "official as authorized herein" is not defined.

PENALTIES:

The penalty scheme provides penalties for: (1) possessing shells, bombs, or other devices with intent to use for an unlawful purpose; (2) placing explosives near certain structures or vehicles; and (3) exploding explosives near certain structures. Apparently, some prosecutors have declined to prosecute offenders in possession of bombs, because of lack of proof to use for an illegal purpose.

RCW 70.74.270 provides that any person who maliciously places any explosive substance against a building, car, vessel, railroad track, airplane, public utility transmission system, or structure to destroy or injure the structure when the substance exploded is guilty of a felony. The felony carries a penalty of up to 20 years in prison if the safety of a person would be endangered if the substance exploded. Under the SRA, this is a violent offense. The SRA ranks this offense at seriousness level IX, which carries a 31 - 41 month penalty for a first offender. In cases where a person may not be injured, the maximum penalty is five years. The SRA ranks this offense at seriousness level VI, which carries a penalty of 12+ - 14 months in prison.

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.

ABANDONING EXPLOSIVES:

It is unlawful for a person to abandon explosives or explosive substances. No penalty is specified for a violation.

Summary of Amended Bill:

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 is an explosive if possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

The definition of class A explosives is changed to refer to "chemicals commonly used to create an explosion," which replaces the currently more specific references to "picric acid, lead azide, and fulminate of mercury."

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

AUTHORIZED PERSONS:

Persons with authority to enter buildings 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 or vehicle that contains explosives. Violation of the provision is a gross misdemeanor.

PENALTIES:

1. In addition to current restrictions on possession and use of explosives without a license, a person may not knowingly possess, offer for sale, or transport, a substance or device which is an explosive or improvised device, or components that are intended to be assembled into an explosive or improvised device. Violation is a class C felony.

2. A person who detonates an explosive or improvised device with the intent to injure, intimidate, or harass a person, or damage or destroy another's property is guilty of a class B felony, provided the action does not violate other specified crimes in the explosives act or the arson act.

3. A person who detonates an explosive or improvised device under circumstances not amounting to another violation under existing law and not otherwise prohibited under the previous provision is guilty of a class C felony.

4. A person who exhibits a device to convey the impression that the device is an explosive improvised device and who intends and does frighten, intimidate, or harass a person is guilty of a class C felony.

RCW 70.24.270 is amended to add "any location" to the list of places where a person may not place an explosive device.

Note: None of these new offenses are ranked under the SRA; none would be violent offenses.

EXEMPTIONS:

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

ABANDONING EXPLOSIVES AND IMPROVISED DEVICES:

"Improvised devices" are added to the list of items that a person may not abandon. "Explosive substances" are stricken. The penalty is a gross misdemeanor.

NEW PROVISIONS

SEIZURE OF EXPLOSIVE DEVICES AND VEHICLES:

Explosive, improvised devices, and components that are possessed and used in violation of this chapter may be seized and forfeited under certain circumstances. Prior to forfeiting the explosives, the seizing agency must afford anyone who claims to be entitled to the explosives an opportunity to challenge the forfeiture action. The seizure and forfeiture provisions are modeled after the Omnibus Drug Act provisions regarding seizure and forfeiture of drugs and personal property.

REPORTING LOSS OR THEFT OF EXPLOSIVES:

A person who is responsible for explosives and who knows of a theft or loss of explosives must report the theft or loss to law enforcement within 24 hours of discovery of the loss or theft. Law enforcement must report the loss to the Washington State Patrol and the Department of Labor and Industries.

Amended Bill Compared to Engrossed Substitute Bill:

The substantive provisions are substantially amended technically to draft the bill according to the proponents' intent without jeopardizing the law regarding existing crimes that under the Sentencing Reform Act are more serious. Conflicts with the Sentencing Reform Act are resolved. Definitions are clarified. The seizure and forfeiture provisions are rewritten to comport with procedural requirements and are modeled after the seizure and forfeiture provisions of the Omnibus Drug Act.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Law enforcement is unable to prosecute people successfully who possess improvised devices such as pipe bombs because the prosecutors have said that existing statutes require proof of possession for an unlawful purpose.

Testimony Against: None.

Witnesses: Detective Steve Herd, Seattle Police Department (pro); Pete Schmidt, Department of Labor and Industries (pro); and Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (pro).