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**SUBSTITUTE SENATE BILL 6153**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

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

Read first time 02/07/92.

1 AN ACT Relating to the unlawful use of explosives; amending RCW  
2 70.74.010, 70.74.160, 70.74.180, 70.74.191, 70.74.270, and 70.74.295;  
3 adding new sections to chapter 70.74 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 70.74.010 and 1972 ex.s. c 88 s 5 are each amended to  
6 read as follows:

7 As used in this chapter, unless a different meaning is plainly  
8 required by the context:

9 (1) The terms "authorized", "approved" or "approval" shall be held  
10 to mean authorized, approved, or approval by the department of labor  
11 and industries.

12 (2) The term "blasting agent" shall be held to mean and include any  
13 material or mixture consisting of a fuel and oxidizer, intended for  
14 blasting, not otherwise classified as an explosive, and in which none

1 of the ingredients are classified as an explosive, provided that the  
2 finished product, as mixed and packaged for use or shipment, cannot be  
3 detonated when unconfined by means of a No. 8 test blasting cap.

4 (3) The term "explosive" or "explosives" whenever used in this  
5 chapter, shall be held to mean and include any chemical compound or  
6 mechanical mixture that is commonly used or intended for the purpose of  
7 producing an explosion, that contains any oxidizing and combustible  
8 units, or other ingredients, in such proportions, quantities or  
9 packing, that an ignition by fire, by friction, by concussion, by  
10 percussion, or by detonation of any part of the compound or mixture may  
11 cause such a sudden generation of highly heated gases that the  
12 resultant gaseous pressures are capable of producing destructive  
13 effects on contiguous objects or of destroying life or limb. In  
14 addition, the term "explosives" shall include all material which is  
15 classified as class A, class B, and class C explosives by the federal  
16 department of transportation(~~(:—PROVIDED, That)~~). However, for the  
17 purposes of this chapter small arms ammunition, small arms ammunition  
18 primers, smokeless powder not exceeding fifty pounds, and black powder  
19 not exceeding five pounds shall not be defined as explosives, unless  
20 possessed or used for a purpose inconsistent with small arms use or  
21 other lawful purpose.

22 (4) Classification of explosives shall include but not be limited  
23 to the following:

24 (a) CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite,  
25 nitroglycerin, (~~(picric acid, lead azide, fulminate of mercury)~~)  
26 chemicals commonly used to create an explosion, black powder exceeding  
27 five pounds, blasting caps in quantities of 1001 or more, and  
28 detonating primers.

29 (b) CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant  
30 explosives, including smokeless propellants exceeding fifty pounds.

1        (c) CLASS C EXPLOSIVES: (Including certain types of manufactured  
2 articles which contain class A or class B explosives, or both, as  
3 components but in restricted quantities) blasting caps in quantities of  
4 1000 or less.

5        (5) The term "explosive-actuated power devices" shall be held to  
6 mean any tool or special mechanized device which is actuated by  
7 explosives, but not to include propellant-actuated power devices.

8        (6) The term "magazine", shall be held to mean and include any  
9 building or other structure, other than a factory building, used for  
10 the storage of explosives.

11        (7) The term "improvised device" means a device placed or  
12 fabricated in a manner incorporating explosives or destructive, lethal,  
13 noxious, pyrotechnic, or incendiary chemicals designed to disfigure,  
14 destroy, distract, or harass.

15        (8) The term "inhabited building", shall be held to mean and  
16 include only a building regularly occupied in whole or in part as a  
17 habitation for human beings, or any church, schoolhouse, railroad  
18 station, store, or other building where people are accustomed to  
19 assemble, other than any building or structure occupied in connection  
20 with the manufacture, transportation, storage, or use of explosives.

21        (9) The term "explosives manufacturing plant" shall be held to mean  
22 and include all lands, with the buildings situated thereon, used in  
23 connection with the manufacturing or processing of explosives or in  
24 which any process involving explosives is carried on, or the storage of  
25 explosives thereat, as well as any premises where explosives are used  
26 as a component part or ingredient in the manufacture of any article or  
27 device.

28        (10) The term "explosives manufacturing building", shall be held to  
29 mean and include any building or other structure (excepting magazines)  
30 containing explosives, in which the manufacture of explosives, or any

1 processing involving explosives, is carried on, and any building where  
2 explosives are used as a component part or ingredient in the  
3 manufacture of any article or device.

4 (11) The term "railroad" shall be held to mean and include any  
5 steam, electric, or other railroad which carries passengers for hire.

6 (12) The term "highway" shall be held to mean and include any  
7 public street, public alley, or public road.

8 (13) The term "efficient artificial barricade" shall be held to  
9 mean an artificial mound or properly revetted wall of earth of a  
10 minimum thickness of not less than three feet or such other artificial  
11 barricade as approved by the department of labor and industries.

12 (14) The term "person" shall be held to mean and include any  
13 individual, firm, copartnership, corporation, company, association,  
14 joint stock association, and including any trustee, receiver, assignee,  
15 or personal representative thereof.

16 (15) The term "dealer" shall be held to mean and include any person  
17 who purchases explosives or blasting agents for the sole purpose of  
18 resale, and not for use or consumption.

19 (16) The term "forbidden or not acceptable explosives" shall be  
20 held to mean and include explosives which are forbidden or not  
21 acceptable for transportation by common carriers by rail freight, rail  
22 express, highway, or water in accordance with the regulations of the  
23 federal department of transportation.

24 (17) The term "handloader" shall be held to mean and include any  
25 person who engages in the noncommercial assembling of small arms  
26 ammunition for his own use, specifically the operation of installing  
27 new primers, powder, and projectiles into cartridge cases.

28 (18) The term "handloader components" means small arms ammunition,  
29 small arms ammunition primers, smokeless powder not exceeding fifty

1 pounds, and black powder as used in muzzle loading firearms not  
2 exceeding five pounds.

3       (19) The term "fuel" shall be held to mean and include a substance  
4 which may react with the oxygen in the air or with the oxygen yielded  
5 by an oxidizer to produce combustion.

6       (20) The term "motor vehicle" shall be held to mean and include any  
7 self-propelled automobile, truck, tractor, semi-trailer or full  
8 trailer, or other conveyance used for the transportation of freight.

9       (21) The term "natural barricade" shall be held to mean and include  
10 any natural hill, mound, wall, or barrier composed of earth or rock or  
11 other solid material of a minimum thickness of not less than three  
12 feet.

13       (22) The term "oxidizer" shall be held to mean a substance that  
14 yields oxygen readily to stimulate the combustion of organic matter or  
15 other fuel.

16       (23) The term "propellant-actuated power device" shall be held to  
17 mean and include any tool or special mechanized device or gas generator  
18 system which is actuated by a propellant or which releases and directs  
19 work through a propellant charge.

20       (24) The term "public conveyance" shall be held to mean and include  
21 any railroad car, streetcar, ferry, cab, bus, airplane, or other  
22 vehicle which is carrying passengers for hire.

23       (25) The term "public utility transmission system" shall mean power  
24 transmission lines over 10 KV, telephone cables, or microwave  
25 transmission systems, or buried or exposed pipelines carrying water,  
26 natural gas, petroleum, or crude oil, or refined products and  
27 chemicals, whose services are regulated by the utilities and  
28 transportation commission, municipal, or other publicly owned systems.

29       (26) The term "purchaser" shall be held to mean any person who  
30 buys, accepts, or receives any explosives or blasting agents.

1       (27) The term (~~("pyrotechnics")~~) "pyrotechnic" shall be held to  
2 mean and include any combustible or explosive compositions or  
3 manufactured articles designed and prepared for the purpose of  
4 producing audible or visible effects which are commonly referred to as  
5 fireworks.

6       (28) The term "small arms ammunition" shall be held to mean and  
7 include any shotgun, rifle, pistol, or revolver cartridge, and  
8 cartridges for propellant-actuated power devices and industrial guns.  
9 Military-type ammunition containing explosive bursting charges,  
10 incendiary, tracer, spotting, or pyrotechnic projectiles is excluded  
11 from this definition.

12       (29) The term "small arms ammunition primers" shall be held to mean  
13 small percussion-sensitive explosive charges encased in a cup, used to  
14 ignite propellant powder and shall include percussion caps as used in  
15 muzzle loaders.

16       (30) The term "smokeless propellants" shall be held to mean and  
17 include solid chemicals or solid chemical mixtures in excess of fifty  
18 pounds which function by rapid combustion.

19       (31) The term "user" shall be held to mean and include any natural  
20 person, manufacturer, or blaster who acquires, purchases, or uses  
21 explosives as an ultimate consumer or who supervises such use.

22       Words used in the singular number shall include the plural, and the  
23 plural the singular.

24       **Sec. 2.** RCW 70.74.160 and 1969 ex.s. c 137 s 19 are each amended  
25 to read as follows:

26       No person, except (~~(an official as authorized herein)~~) the director  
27 of labor and industries or the director's authorized agent, the owner,  
28 the owner's agent, or a person authorized to (~~(do so by the owner~~  
29 ~~thereof, or his agent, shall)~~) enter by the owner or owner's agent, or

1 a law enforcement officer acting within his or her official capacity,  
2 may enter any explosives manufacturing building, magazine or car,  
3 vehicle or other common carrier containing explosives in this state.  
4 Violation of this section is a gross misdemeanor punishable under  
5 chapter 9A.20 RCW.

6 **Sec. 3.** RCW 70.74.180 and 1984 c 55 s 1 are each amended to read  
7 as follows:

8 ~~((Any person who has in his possession or control any shell, bomb,~~  
9 ~~or similar device, charged or filled with one or more explosives,~~  
10 ~~intending to use it or cause it to be used for an unlawful purpose, is~~  
11 ~~guilty of a felony, and upon conviction shall be punished by~~  
12 ~~imprisonment in a state prison for a term of not more than twenty~~  
13 ~~years.)) Unless otherwise allowed to do so under this chapter:~~

14 (1) A person may not knowingly possess, give away, loan, sell,  
15 offer for sale, or transport:

16 (a) A substance or device they know to be an explosive or  
17 improvised device; or

18 (b) Components that they know can be rapidly assembled into an  
19 explosive or improvised device.

20 Violation of this subsection is a class C felony.

21 (2) A person who uses an explosive or improvised device with the  
22 intent to injure, intimidate, or harass a person, or damage or destroy  
23 another's property, is guilty of a class B felony.

24 (3) A person who uses an explosive or improvised device for an  
25 unlawful purpose not covered by subsection (2) of this section is  
26 guilty of a class C felony.

27 (4) A person who uses a device so designed, assembled, fabricated,  
28 or manufactured as to convey the appearance of an explosive or

1 improvised device, and who intends to, and does, frighten, intimidate,  
2 or harass a person, is guilty of a class C felony.

3       **Sec. 4.** RCW 70.74.191 and 1985 c 191 s 2 are each amended to read  
4 as follows:

5       The laws contained in this chapter and the ensuing regulations  
6 prescribed by the department of labor and industries shall not apply  
7 to:

8       (1) Explosives or blasting agents in the course of transportation  
9 by way of railroad, water, highway or air under the jurisdiction of,  
10 and in conformity with, regulations adopted by the federal department  
11 of transportation, the Washington state utilities and transportation  
12 commission and the Washington state patrol;

13       (2) The laboratories of schools, colleges and similar institutions  
14 if confined to the purpose of instruction or research and if not  
15 exceeding the quantity of one pound;

16       (3) Explosives in the forms prescribed by the official United  
17 States Pharmacopoeia;

18       (4) The transportation, storage and use of explosives or blasting  
19 agents in the normal and emergency operations of federal agencies and  
20 departments including the regular United States military departments on  
21 military reservations, or the duly authorized militia of any state or  
22 territory, or to emergency operations of any state department or  
23 agency, any police, or any municipality or county;

24       (5) The importation, sale, possession, and use of fireworks,  
25 signaling devices, flares, fuses, and torpedoes;

26       (6) The transportation, storage, and use of explosives or blasting  
27 agents in the normal and emergency avalanche control procedures as  
28 conducted by trained and licensed ski area operator personnel.  
29 However, the storage, transportation, and use of explosives and



1 blasting agents for such use shall meet the requirements of regulations  
2 adopted by the director of labor and industries; and

3 (7) Any violation under this chapter if any existing ordinance of  
4 any city, municipality or county is more stringent than this chapter.

5 **Sec. 5.** RCW 70.74.270 and 1984 c 55 s 2 are each amended to read  
6 as follows:

7 Every person who maliciously places any explosive substance or  
8 material in, upon, under, against, or near any building, car, vessel,  
9 railroad track, airplane, public utility transmission system, ~~((or))~~  
10 structure, or at any location in such manner or under such  
11 circumstances as to destroy or injure it if exploded, shall be  
12 ~~((punished as follows))~~ guilty of the following:

13 (1) If the circumstances and surroundings are such that the safety  
14 of any person might be endangered by the explosion, ~~((by imprisonment~~  
15 ~~in the state penitentiary for not more than twenty years))~~ the person  
16 is guilty of a class B felony;

17 (2) In every other case ~~((by imprisonment in the state penitentiary~~  
18 ~~for not more than five years))~~ the person is guilty of a class C  
19 felony.

20 **Sec. 6.** RCW 70.74.295 and 1972 ex.s. c 88 s 3 are each amended to  
21 read as follows:

22 It shall be unlawful for any person to abandon explosives or  
23 ~~((explosive substances))~~ improvised devices. Violation of this section  
24 is a gross misdemeanor punishable under chapter 9A.20 RCW.

25 NEW SECTION. **Sec. 7.** A law enforcement officer who observes  
26 an unauthorized explosive or improvised device, or components that may  
27 be rapidly assembled into an explosive or improvised device, may

1 immediately take custody of the explosive, improvised device, or  
2 components and any container or vehicle in which such a device or  
3 components are observed.

4 NEW SECTION. **Sec. 8.** (1) A law enforcement agency shall  
5 destroy explosives seized under this chapter when it is necessary to  
6 protect the public safety and welfare. When destruction is not  
7 necessary to protect the public safety and welfare, and the explosives  
8 are not being held for evidence, the law enforcement agency that seized  
9 explosives under this chapter shall:

10 (a) Issue a written notice that identifies the agency to the person  
11 from whom the explosives were seized within fifteen days of the  
12 seizure;

13 (b) Provide a form by which the person may request a hearing before  
14 the agency to contest the seizure;

15 (c) Conduct a hearing if the form requesting a hearing is received  
16 within thirty days after the date the notice was issued;

17 (d) Conduct the hearing requested according to chapter 34.05 RCW;

18 (e) Declare the explosives forfeited if the person fails to request  
19 a hearing within thirty days of issuing the notice.

20 (2) If the law enforcement agency declares the explosives  
21 forfeited, the agency shall destroy the explosives. When explosives  
22 are destroyed either to protect public safety or because the explosives  
23 were forfeited, the person from whom the explosives were seized loses  
24 all rights of action against the law enforcement agency or its  
25 employees acting within the scope of their employment, or other  
26 governmental entity or employee involved with the seizure and  
27 destruction of explosives.

1        NEW SECTION.    **Sec. 9.**        A person who knows of a theft or loss of  
2 explosives for which that person is responsible under this chapter  
3 shall report the theft or loss to the local law enforcement agency  
4 within twenty-four hours of discovery.    The local law enforcement  
5 agency shall immediately report the theft or loss to the Washington  
6 state patrol and the department of labor and industries.

7        NEW SECTION.    **Sec. 10.**        Sections 7 through 9 of this act are  
8 each added to chapter 70.74 RCW.

9        NEW SECTION.    **Sec. 11.**        If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.