

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1118

Chapter 293, Laws of 1993

53rd Legislature
1993 Regular Session

EXPLOSIVES--UNLAWFUL USES

EFFECTIVE DATE: 7/25/93

Passed by the House April 20, 1993
Yeas 97 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 6, 1993
Yeas 48 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 12, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1118** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 12, 1993 - 10:18 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1118

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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)

Read first time 02/19/93.

1 AN ACT Relating to the unlawful use of explosives; amending RCW
2 70.74.010, 70.74.022, 70.74.160, 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
15 of the ingredients are classified as an explosive, provided that the
16 finished product, as mixed and packaged for use or shipment, cannot be
17 detonated when unconfined by means of a No. 8 test blasting cap.

18 (3) The term "explosive" or "explosives" whenever used in this
19 chapter, shall be held to mean and include any chemical compound or

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

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

19 (a) CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite,
20 nitroglycerin, picric acid, lead azide, fulminate of mercury, black
21 powder exceeding five pounds, blasting caps in quantities of 1001 or
22 more, and detonating primers.

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

25 (c) CLASS C EXPLOSIVES: (Including certain types of manufactured
26 articles which contain class A or class B explosives, or both, as
27 components but in restricted quantities) blasting caps in quantities of
28 1000 or less.

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

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

35 (7) The term "improvised device" means a device which is fabricated
36 with explosives or destructive, lethal, noxious, pyrotechnic, or
37 incendiary chemicals and which is designed to disfigure, destroy,
38 distract, or harass.

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

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

14 (10) The term "explosives manufacturing building", shall be held to
15 mean and include any building or other structure (excepting magazines)
16 containing explosives, in which the manufacture of explosives, or any
17 processing involving explosives, is carried on, and any building where
18 explosives are used as a component part or ingredient in the
19 manufacture of any article or device.

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

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

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

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

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

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

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

5 (18) The term "handloader components" means small arms ammunition,
6 small arms ammunition primers, smokeless powder not exceeding fifty
7 pounds, and black powder as used in muzzle loading firearms not
8 exceeding five pounds.

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

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

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

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

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

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

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

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

37 (27) The term (~~"pyrotechnics"~~) "pyrotechnic" shall be held to
38 mean and include any combustible or explosive compositions or
39 manufactured articles designed and prepared for the purpose of

1 producing audible or visible effects which are commonly referred to as
2 fireworks.

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

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

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

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

19 Words used in the singular number shall include the plural, and the
20 plural the singular.

21 **Sec. 2.** RCW 70.74.022 and 1988 c 198 s 10 are each amended to read
22 as follows:

23 (1) It is unlawful for any person to manufacture, purchase, sell,
24 offer for sale, use, possess, transport, or store any explosive,
25 improvised device, or components that are intended to be assembled into
26 an explosive or improvised device without having a validly issued
27 license from the department of labor and industries, which license has
28 not been revoked or suspended. Violation of this section is a (~~gross~~
29 ~~misdemeanor~~) class C felony.

30 (2) Upon notice from the department of labor and industries or any
31 law enforcement agency having jurisdiction, a person manufacturing,
32 purchasing, selling, offering for sale, using, possessing,
33 transporting, or storing any explosive, improvised device, or
34 components of explosives or improvised devices without a license shall
35 immediately surrender (~~any and all such~~) those explosives, improvised
36 devices, or components to the department or to the respective law
37 enforcement agency.

1 (3) At any time that the director of labor and industries requests
2 the surrender of explosives, improvised devices, or components of
3 explosives or improvised devices, from any person pursuant to
4 subsection (2) of this section, the director may in addition request
5 the attorney general to make application to the superior court of the
6 county in which the unlawful practice exists for a temporary
7 restraining order or such other relief as appears to be appropriate
8 under the circumstances.

9 **Sec. 3.** RCW 70.74.160 and 1969 ex.s. c 137 s 19 are each amended
10 to read as follows:

11 No person, except (~~(an official as authorized herein)~~) the director
12 of labor and industries or the director's authorized agent, the owner,
13 the owner's agent, or a person authorized to (~~do so by the owner~~
14 ~~thereof, or his agent, shall~~)) enter by the owner or owner's agent, or
15 a law enforcement officer acting within his or her official capacity,
16 may enter any explosives manufacturing building, magazine or car,
17 vehicle or other common carrier containing explosives in this state.
18 Violation of this section is a gross misdemeanor punishable under
19 chapter 9A.20 RCW.

20 NEW SECTION. **Sec. 4.** Unless otherwise allowed to do so under this
21 chapter, a person who exhibits a device designed, assembled,
22 fabricated, or manufactured, to convey the appearance of an explosive
23 or improvised device, and who intends to, and does, intimidate or
24 harass a person, is guilty of a class C felony.

25 **Sec. 5.** RCW 70.74.191 and 1985 c 191 s 2 are each amended to read
26 as follows:

27 The laws contained in this chapter and the ensuing regulations
28 prescribed by the department of labor and industries shall not apply
29 to:

30 (1) Explosives or blasting agents in the course of transportation
31 by way of railroad, water, highway or air under the jurisdiction of,
32 and in conformity with, regulations adopted by the federal department
33 of transportation, the Washington state utilities and transportation
34 commission and the Washington state patrol;

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

4 (3) Explosives in the forms prescribed by the official United
5 States Pharmacopoeia;

6 (4) The transportation, storage and use of explosives or blasting
7 agents in the normal and emergency operations of federal agencies and
8 departments including the regular United States military departments on
9 military reservations, or the duly authorized militia of any state or
10 territory, or to emergency operations of any state department or
11 agency, any police, or any municipality or county;

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

14 (6) The transportation, storage, and use of explosives or blasting
15 agents in the normal and emergency avalanche control procedures as
16 conducted by trained and licensed ski area operator personnel.
17 However, the storage, transportation, and use of explosives and
18 blasting agents for such use shall meet the requirements of regulations
19 adopted by the director of labor and industries; and

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

22 **Sec. 6.** RCW 70.74.270 and 1992 c 7 s 49 are each amended to read
23 as follows:

24 Every person who maliciously places any explosive (~~substance or~~
25 ~~material~~) or improvised device in, upon, under, against, or near any
26 building, car, vessel, railroad track, airplane, public utility
27 transmission system, or structure, in such manner or under such
28 circumstances as to destroy or injure it if exploded, shall be punished
29 as follows:

30 (1) If the circumstances and surroundings are such that the safety
31 of any person might be endangered by the explosion, by imprisonment in
32 a state correctional facility for not more than twenty years;

33 (2) In every other case by imprisonment in a state correctional
34 facility for not more than five years.

35 **Sec. 7.** RCW 70.74.295 and 1972 ex.s. c 88 s 3 are each amended to
36 read as follows:

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

4 NEW SECTION. Sec. 8. (1) Explosives, improvised devices, and
5 components of explosives and improvised devices that are possessed,
6 manufactured, stored, sold, purchased, transported, abandoned,
7 detonated, or used in violation of a provision of this chapter are
8 subject to seizure and forfeiture by a law enforcement agency and no
9 property right exists in them.

10 (2) Seizure of explosives, improvised devices, and components of
11 explosives and improvised devices under subsection (1) of this section
12 may be made if:

13 (a) The seizure is incident to arrest or a search under a search
14 warrant;

15 (b) The explosives, improvised devices, or components have been the
16 subject of a prior judgment in favor of the state in an injunction or
17 forfeiture proceeding based upon this chapter;

18 (c) A law enforcement officer has probable cause to believe that
19 the explosives, improvised devices, or components are directly or
20 indirectly dangerous to health or safety; or

21 (d) The law enforcement officer has probable cause to believe that
22 the explosives, improvised devices, or components were used or were
23 intended to be used in violation of this chapter.

24 (3) A law enforcement agency shall destroy explosives seized under
25 this chapter when it is necessary to protect the public safety and
26 welfare. When destruction is not necessary to protect the public
27 safety and welfare, and the explosives are not being held for evidence,
28 a seizure pursuant to this section commences proceedings for
29 forfeiture.

30 (4) The law enforcement agency under whose authority the seizure
31 was made shall issue a written notice of the seizure and commencement
32 of the forfeiture proceedings to the person from whom the explosives
33 were seized, to any known owner of the explosives, and to any person
34 who has a known interest in the explosives. The notice shall be issued
35 within fifteen days of the seizure. The notice of seizure and
36 commencement of the forfeiture proceedings shall be served in the same
37 manner as provided in RCW 4.28.080 for service of a summons. The law
38 enforcement agency shall provide a form by which the person or persons

1 may request a hearing before the law enforcement agency to contest the
2 seizure.

3 (5) If no person notifies the seizing law enforcement agency in
4 writing of the person's claim of ownership or right to possession of
5 the explosives, improvised devices, or components within thirty days of
6 the date the notice was issued, the seized explosives, devices, or
7 components shall be deemed forfeited.

8 (6) If, within thirty days of the issuance of the notice, any
9 person notifies the seizing law enforcement agency in writing of the
10 person's claim of ownership or right to possession of items seized, the
11 person or persons shall be afforded a reasonable opportunity to be
12 heard as to the claim or right. The hearing shall be before the chief
13 law enforcement or the officer's designee of the seizing agency, except
14 that the person asserting the claim or right may remove the matter to
15 a court of competent jurisdiction if the aggregate value of the items
16 seized is more than five hundred dollars. The hearing and any appeal
17 shall be conducted according to chapter 34.05 RCW. The seizing law
18 enforcement agency shall bear the burden of proving that the person (a)
19 has no lawful right of ownership or possession and (b) that the items
20 seized were possessed, manufactured, stored, sold, purchased,
21 transported, abandoned, detonated, or used in violation of a provision
22 of this chapter with the person's knowledge or consent.

23 (7) The seizing law enforcement agency shall promptly return the
24 items seized to the claimant upon a determination that the claimant is
25 entitled to possession of the items seized.

26 (8) If the items seized are forfeited under this statute, the
27 agency shall destroy the explosives. When explosives are destroyed
28 either to protect public safety or because the explosives were
29 forfeited, the person from whom the explosives were seized loses all
30 rights of action against the law enforcement agency or its employees
31 acting within the scope of their employment, or other governmental
32 entity or employee involved with the seizure and destruction of
33 explosives.

34 (9) This section is not intended to change the seizure and
35 forfeiture powers, enforcement, and penalties available to the
36 department of labor and industries pursuant to chapter 49.17 RCW as
37 provided in RCW 70.74.390.

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 of the theft or loss. The local
5 law enforcement agency shall immediately report the theft or loss to
6 the department of labor and industries.

7 NEW SECTION. **Sec. 10.** Sections 4, 8, and 9 of this act are each
8 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.

 Passed the House April 20, 1993.

 Passed the Senate April 6, 1993.

 Approved by the Governor May 12, 1993.

 Filed in Office of Secretary of State May 12, 1993.