
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 firearms; and amending RCW 9.41.098.

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

3 **Sec. 1.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
4 as follows:

5 (1) The superior courts and the courts of limited jurisdiction of
6 the state may order forfeiture of a firearm which is proven to be:

7 (a) Found concealed on a person not authorized by RCW 9.41.060 or
8 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
9 defense to forfeiture if the person possessed a valid Washington
10 concealed pistol license within the preceding two years and has not
11 become ineligible for a concealed pistol license in the interim.
12 Before the firearm may be returned, the person must pay the past due
13 renewal fee and the current renewal fee;

14 (b) Commercially sold to any person without an application as
15 required by RCW 9.41.090;

16 (c) Found in the possession or under the control of a person at the
17 time the person committed or was arrested for committing a crime of
18 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)(a) 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 judicially
29 forfeited or forfeited due to failure to make a claim under RCW
30 63.32.010, 63.40.010, or 63.35.020 (~~shall~~) may be submitted for
31 auction 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, trade, or destruction, a court
37 may temporarily retain forfeited firearms if needed for evidence.

38 (i) The proceeds from any sale shall be divided as follows: (~~The~~
39 ~~local jurisdiction and the Washington state patrol shall retain its~~

1 ~~costs, including actual costs of storage and sale, and shall forward~~
2 ~~the remainder to the state department of wildlife for use in its~~
3 ~~firearms training program pursuant to RCW 77.32.155))~~ The agency
4 submitting the surplus firearms for sale may retain sixty percent of
5 the total proceeds from the sale of the firearms, to be used by the
6 agency exclusively for law enforcement purposes. Forty percent of the
7 total proceeds shall go to the firearms range account. All costs
8 incurred in selling the surplus firearms shall be paid from the portion
9 retained by the law enforcement agency; or

10 (ii) In lieu of selling surplus firearms at auction a law
11 enforcement agency may trade the surplus firearms to a commercial
12 seller in exchange for departmental service weapons or other firearms
13 or police equipment, to be used by the agency exclusively for law
14 enforcement purposes. If surplus firearms are exchanged for the
15 described equipment, the value of the equipment shall not be subject to
16 division under (a)(i) of this subsection.

17 (b) If a local government chooses to destroy such firearms the
18 local government shall enact an ordinance providing for the destruction
19 of such firearms. Antique firearms are exempted from destruction.

20 (c) If a firearm is delivered to a law enforcement agency and the
21 agency no longer requires use of the firearm, the agency shall dispose
22 of the firearm (~~by auction~~) as provided by this subsection. The
23 public auctioning agency shall, as a minimum, maintain a record of all
24 forfeited firearms by manufacturer, model, caliber, serial number, date
25 and circumstances of forfeiture, and final disposition. The records
26 shall be open to public inspection and copying.

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

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

1 (c) to the owner if the proceedings are dismissed or as directed in
2 subsection (3) of this section.

3 (5) This section shall apply to all forfeited firearms in the
4 possession of a law enforcement agency, regardless of when the firearms
5 came into the possession of the law enforcement agency.

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