
SENATE BILL 5125

State of Washington 54th Legislature 1995 Regular Session

By Senators Wojahn, Prentice, C. Anderson, Fraser, McAuliffe and Kohl

Read first time 01/12/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to firearms in the possession of the Washington
2 state patrol; and amending RCW 9.41.098.

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

4 **Sec. 1.** RCW 9.41.098 and 1994 sp.s. c 7 s 414 are each amended to
5 read 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 of a person prohibited from possessing
18 the firearm under RCW 9.41.040;

1 (d) Found in the possession or under the control of a person at the
2 time the person committed or was arrested for committing a serious
3 offense or a crime in which a firearm was used or displayed or a felony
4 violation of the Uniform Controlled Substances Act, chapter 69.50 RCW;

5 (e) Found concealed on a person who is in any place in which a
6 concealed pistol license is required, and who is under the influence of
7 any drug or under the influence of intoxicating liquor, as defined in
8 chapter 46.61 RCW;

9 (f) Found in the possession of a person free on bail or personal
10 recognizance pending trial, appeal, or sentencing for a serious offense
11 or a crime in which a firearm was used or displayed, except that
12 violations of Title 77 RCW shall not result in forfeiture under this
13 section;

14 (g) Found in the possession of a person found to have been mentally
15 incompetent while in possession of a firearm when apprehended or who is
16 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

17 (h) Known to have been used or displayed by a person in the
18 violation of a proper written order of a court of general jurisdiction;
19 or

20 (i) Known to have been used in the commission of a serious offense
21 or a crime in which a firearm was used or displayed or a felony
22 violation of the Uniform Controlled Substances Act, chapter 69.50 RCW.

23 (2) Upon order of forfeiture, the court in its discretion may order
24 destruction of any forfeited firearm. A court may temporarily retain
25 forfeited firearms needed for evidence.

26 (a) Except as provided in (b), (c), and (d) of this subsection,
27 firearms that are: (i) Judicially forfeited and no longer needed for
28 evidence; or (ii) forfeited due to a failure to make a claim under RCW
29 63.32.010 or 63.40.010; may be disposed of in any manner determined by
30 the local legislative authority. Any proceeds of an auction or trade
31 may be retained by the legislative authority. This subsection (2)(a)
32 applies only to firearms that come into the possession of the law
33 enforcement agency after June 30, 1993, and applies only if the law
34 enforcement agency has complied with (b) of this subsection.

35 By midnight, June 30, 1993, every law enforcement agency shall
36 prepare an inventory, under oath, of every firearm that has been
37 judicially forfeited, has been seized and may be subject to judicial
38 forfeiture, or that has been, or may be, forfeited due to a failure to
39 make a claim under RCW 63.32.010 or 63.40.010.

1 (b) Except as provided in (c) of this subsection, of the
2 inventoried firearms a law enforcement agency shall destroy illegal
3 firearms, may retain a maximum of ten percent of legal forfeited
4 firearms for agency use, and shall either:

5 (i) Comply with the provisions for the auction of firearms in RCW
6 9.41.098 that were in effect immediately preceding May 7, 1993; or

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

20 (c) Antique firearms and firearms recognized as curios, relics, and
21 firearms of particular historical significance by the United States
22 treasury department bureau of alcohol, tobacco, and firearms are exempt
23 from destruction and shall be disposed of by auction or trade to
24 licensed dealers.

25 (d) Except as provided in (b) and (c) of this subsection, firearms
26 in the possession of the Washington state patrol on or after May 7,
27 1993, that are judicially forfeited and no longer needed for evidence,
28 or forfeited due to a failure to make a claim under RCW 63.35.020,
29 ((must)) may be disposed of ((as follows: (i) Firearms illegal for any
30 person to possess must be destroyed; (ii) the Washington state patrol
31 may retain a maximum of ten percent of legal firearms for agency use;
32 and (iii) all other legal firearms must be auctioned or traded to
33 licensed dealers)) in any manner determined by the Washington state
34 patrol. The Washington state patrol may retain any proceeds of an
35 auction or trade.

36 (3) The court shall order the firearm returned to the owner upon a
37 showing that there is no probable cause to believe a violation of
38 subsection (1) of this section existed or the firearm was stolen from

1 the owner or the owner neither had knowledge of nor consented to the
2 act or omission involving the firearm which resulted in its forfeiture.
3 (4) A law enforcement officer of the state or of any county or
4 municipality may confiscate a firearm found to be in the possession of
5 a person under circumstances specified in subsection (1) of this
6 section. After confiscation, the firearm shall not be surrendered
7 except: (a) To the prosecuting attorney for use in subsequent legal
8 proceedings; (b) for disposition according to an order of a court
9 having jurisdiction as provided in subsection (1) of this section; or
10 (c) to the owner if the proceedings are dismissed or as directed in
11 subsection (3) of this section.

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