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HOUSE BILL 2372

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State of Washington

64th Legislature

2016 Regular Session

By Representative Senn

1 AN ACT Relating to the disposition of forfeited firearms; and  
2 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 2003 c 39 s 5 are each amended to read  
5 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  
10 absolute defense to forfeiture if the person possessed a valid  
11 Washington concealed pistol license within the preceding two years  
12 and has not become ineligible for a concealed pistol license in the  
13 interim. Before the firearm may be returned, the person must pay the  
14 past due 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) In the possession of a person prohibited from possessing the  
18 firearm under RCW 9.41.040 or 9.41.045;

19 (d) In the possession or under the control of a person at the  
20 time the person committed or was arrested for committing a felony or

1 committing a nonfelony crime in which a firearm was used or  
2 displayed;

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

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

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

15 (h) Used or displayed by a person in the violation of a proper  
16 written order of a court of general jurisdiction; or

17 (i) Used in the commission of a felony or of a nonfelony crime in  
18 which a firearm was used or displayed.

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

22 (a) Except as provided in (b)(~~7~~) and (c)(~~, and (d)~~) of this  
23 subsection, firearms that are(~~(i)~~) judicially forfeited and no  
24 longer needed for evidence(~~(i)~~) or (~~(ii)~~) forfeited due to a  
25 failure to make a claim under RCW 63.32.010 or 63.40.010(~~(i) may be~~  
26 ~~disposed of in any manner determined by the local legislative~~  
27 ~~authority. Any proceeds of an auction or trade may be retained by the~~  
28 ~~legislative authority. This subsection (2)(a) applies only to~~  
29 ~~firearms that come into the possession of the law enforcement agency~~  
30 ~~after June 30, 1993.~~

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

36 ~~(b) Except as provided in (c) of this subsection, of the~~  
37 ~~inventoried firearms a law enforcement agency shall destroy illegal~~  
38 ~~firearms, may retain a maximum of ten percent of legal forfeited~~  
39 ~~firearms for agency use, and shall either:~~

1       ~~(i) Comply with the provisions for the auction of firearms in RCW~~  
2 ~~9.41.098 that were in effect immediately preceding May 7, 1993; or~~  
3       ~~(ii) Trade, auction, or arrange for the auction of, rifles and~~  
4 ~~shotguns. In addition, the law enforcement agency shall either trade,~~  
5 ~~auction, or arrange for the auction of, short firearms, or shall pay~~  
6 ~~a fee of twenty five dollars to the state treasurer for every short~~  
7 ~~firearm neither auctioned nor traded, to a maximum of fifty thousand~~  
8 ~~dollars. The fees shall be accompanied by an inventory, under oath,~~  
9 ~~of every short firearm listed in the inventory required by (a) of~~  
10 ~~this subsection, that has been neither traded nor auctioned. The~~  
11 ~~state treasurer shall credit the fees to the firearms range account~~  
12 ~~established in RCW 79A.25.210. All trades or auctions of firearms~~  
13 ~~under this subsection shall be to licensed dealers. Proceeds of any~~  
14 ~~auction less costs, including actual costs of storage and sale, shall~~  
15 ~~be forwarded to the firearms range account established in RCW~~  
16 ~~79A.25.210)), must be disposed of as follows:~~  
17       (i) Firearms illegal for any person to possess must be destroyed;  
18       (ii) Legal firearms may be retained by the local law enforcement  
19 agency for agency use; and  
20       (iii) All legal firearms that are not retained by the local law  
21 enforcement agency for agency use must be destroyed.  
22       ~~((e))~~ (b) Antique firearms and firearms recognized as curios,  
23 relics, and firearms of particular historical significance by the  
24 United States treasury department bureau of alcohol, tobacco, ((and))  
25 firearms and explosives are exempt from destruction and shall be  
26 disposed of by auction or trade to licensed dealers. Any proceeds of  
27 an auction or trade may be retained by the local legislative  
28 authority.  
29       ~~((d))~~ (c) Firearms in the possession of the Washington state  
30 patrol ((on or after May 7, 1993,)) that are judicially forfeited and  
31 no longer needed for evidence, or forfeited due to a failure to make  
32 a claim under RCW 63.35.020, must be disposed of as follows: (i)  
33 Firearms illegal for any person to possess must be destroyed; (ii)  
34 the Washington state patrol may retain a maximum of ten percent of  
35 legal firearms for agency use; and (iii) all other legal firearms  
36 must be ((auctioned or traded to licensed dealers)) destroyed, except  
37 as provided in (b) of this subsection. The Washington state patrol  
38 may retain any proceeds of an auction or trade of firearms under (b)  
39 of this subsection.

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

7           (4) A law enforcement officer of the state or of any county or  
8 municipality may confiscate a firearm found to be in the possession  
9 of a person under circumstances specified in subsection (1) of this  
10 section. After confiscation, the firearm shall not be surrendered  
11 except: (a) To the prosecuting attorney for use in subsequent legal  
12 proceedings; (b) for disposition according to an order of a court  
13 having jurisdiction as provided in subsection (1) of this section; or  
14 (c) to the owner if the proceedings are dismissed or as directed in  
15 subsection (3) of this section.

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