

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 149**

4 (By Senators Unger, Miller and Kessler (Mr. President))

5 _____
6 [Originating in the Committee on Finance;
7 reported February 27, 2012.]
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9
10 A BILL to amend and reenact §36-8A-2, §36-8A-3 and §36-8A-5 of the
11 Code of West Virginia, 1931, as amended, all relating to the
12 disposition of forfeited or abandoned firearms in state
13 custody.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West
16 Virginia, 1931, as amended, be amended and reenacted, all to read
17 as follows:

18 **ARTICLE 8A. UNCLAIMED STOLEN PROPERTY HELD BY LAW-ENFORCEMENT**
19 **AGENCIES.**

20 **§36-8A-2. Unclaimed stolen property reports.**

21 (a) ~~Prior to September 1, 1997, and on~~ On or before September
22 1, of each ~~succeeding~~ year, each law-enforcement agency which has
23 unclaimed stolen property in its possession shall file an unclaimed
24 stolen property report with the treasurer which identifies all
25 unclaimed stolen property in its possession at the time the report

1 is filed.

2 (b) An unclaimed stolen property report shall include the
3 following information with respect to all unclaimed stolen property
4 in the possession of the law-enforcement agency filing it:

5 (1) A description of each item, including a serial number, if
6 applicable;

7 (2) An estimated value for each item;

8 (3) Whether any nonprofit organization has requested that any
9 item be donated to it and whether any nonprofit organization might
10 be considered to receive the item as a donation;

11 (4) Whether the law-enforcement agency could use the item for
12 any legitimate and authorized law enforcement or educational
13 purpose;

14 (5) The chief executive's recommendation for the disposition
15 of each item; and

16 (6) If any unclaimed stolen property in the law-enforcement
17 agency's possession consists of firearms or ammunition, ~~the chief~~
18 ~~executive's determination of whether the firearms or ammunition are~~
19 ~~of a sufficient quality to be traded in on new weapons or~~
20 ~~ammunition for the law-enforcement agency or appropriated for the~~
21 ~~law-enforcement agency's use.~~ a description of the best efforts
22 used by the chief executive to determine if the firearm has been
23 lost by, stolen or otherwise unlawfully obtained from an innocent
24 owner or its disposition by public auction or otherwise required by
25 section five of this article.

26 **§36-8A-3. Treasurer's response to unclaimed stolen property**

1 **report.**

2 Within thirty days of the receipt of an unclaimed stolen
3 property report, the treasurer shall send a response to the law-
4 enforcement agency submitting it. For each item identified in the
5 unclaimed stolen property report ~~except firearms and ammunition~~
6 ~~which the chief executive determined to be of sufficient quality to~~
7 ~~trade in on new weapons or ammunition or to appropriate for the~~
8 ~~law enforcement agency's use,~~ the treasurer shall either require
9 that it be delivered to the treasurer, authorize the law-
10 enforcement agency to sell it at a public sale, authorize the
11 law-enforcement agency to donate it to a nonprofit organization,
12 authorize the law-enforcement agency to use it for any legitimate
13 and authorized law enforcement or educational purpose, or authorize
14 the law-enforcement agency either to sell it at a public sale, to
15 donate it to a nonprofit organization, or to use it for any
16 legitimate and authorized law enforcement or educational purpose.
17 ~~However, the treasurer may not authorize the law-enforcement agency~~
18 ~~to sell or donate any firearms or ammunition.~~ If the treasurer
19 determines that any item identified in an unclaimed stolen property
20 report is of such value that it should be processed by the
21 treasurer's office, the treasurer shall have the authority to
22 require that the item be delivered to the treasurer.

23 **§36-8A-5. Regarding the disposition of firearms in state custody.**

24 (a) Subject to the duty to return firearms to innocent owners
25 pursuant to subsection (b) of this section, all firearms, as
26 defined in section two, article seven, chapter sixty-one of this

1 code, that are forfeited or abandoned to any law-enforcement agency
2 of this state or a political subdivision of this state, including
3 the West Virginia Division of Natural Resources, or that are
4 otherwise acquired by the state or a political subdivision of the
5 state and are no longer needed, shall be transferred to the State
6 Treasurer for disposal as provided in this section.

7 (b) Within thirty days of the receipt of an unclaimed stolen
8 property report, the State Treasurer shall coordinate best efforts
9 with the reporting law-enforcement agency to transfer the firearms
10 and ammunition to the State Treasurer for disposal as provided in
11 subsection (d).

12 (c) Prior to the disposal of any firearm that has been
13 forfeited or abandoned to the state, the chief executive of each
14 law-enforcement agency shall use best efforts to determine if the
15 firearm has been lost by, stolen or otherwise unlawfully obtained
16 from an innocent owner, and if so, shall return the firearm to its
17 innocent owner, if ascertainable, unless that person is ineligible
18 to receive or possess a firearm under state or federal law.

19 (d) Except as provided in subsections (c) and (e), the State
20 Treasurer shall dispose of the firearms that it receives under
21 subsection (a) by sale at public auction to persons licensed as
22 firearms collectors, dealers, importers or manufacturers under the
23 provisions of 18 U. S. C. §§921 *et seq.* and authorized to receive
24 firearms under the terms of their license.

25 (1) The auctions required by this subsection may occur online
26 on a rolling basis or at live events but in no event may occur less

1 frequently than once every six months.

2 (2) The State Treasurer shall retain only the net proceeds
3 necessary to cover the costs of administering this section, with
4 any surplus to be transferred to the general fund of the state:
5 *Provided*, That an agency may be reimbursed for any decommissioned
6 firearms formerly in use by the agency that are sold under this
7 section.

8 (3) Employees of the State Police or of the agency from which
9 the firearms are received are not eligible to bid on the firearms
10 at an auction conducted under this section.

11 (e) The requirements of subsection (d) do not apply to a
12 firearm that the chief executive of the law-enforcement agency or
13 his or her designee certifies is unsafe for use because of wear,
14 damage, age or modification, and any such firearm shall at the
15 discretion of the superintendent be transferred to the State Police
16 forensic laboratory for training or experimental purposes or to a
17 museum or historical society or be destroyed.

18 (f) The State Treasurer shall keep records of all firearms
19 acquired and disposed of under the provisions of this section, as
20 well as the net proceeds of the sales and the disbursement of such
21 proceeds, and shall maintain these records for not less than ten
22 years from the date on which a firearm is disposed of or on which
23 a disbursement of funds is made, as the case may be.

(NOTE: §36-8A-5 has been completely rewritten; therefore, strike-throughs and underscores have been omitted.)