

# ENROLLED

## COMMITTEE SUBSTITUTE

FOR

# Senate Bill No. 149

(SENATORS UNGER, MILLER AND KESSLER (MR. PRESIDENT), *original sponsors*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend and reenact §36-8A-2, §36-8A-3 and §36-8A-5 of the Code of West Virginia, 1931, as amended, all relating to the disposition of forfeited or abandoned firearms in state custody; requiring additional measures to identify, find and return firearms and ammunition to owners, if they are eligible to own and possess them; and to allow for the sale of firearms to licensed firearms collectors, dealers, importers or manufacturers.

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

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

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

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

- 1       (a) On or before September 1, of each year, each law-
- 2 enforcement agency which has unclaimed stolen property in

3 its possession shall file an unclaimed stolen property report  
4 with the Treasurer which identifies all unclaimed stolen  
5 property in its possession at the time the report is filed.

6 (b) An unclaimed stolen property report shall include the  
7 following information with respect to all unclaimed stolen  
8 property in the possession of the law-enforcement agency  
9 filing it:

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

12 (2) An estimated value for each item;

13 (3) Whether any nonprofit organization has requested  
14 that any item be donated to it and whether any nonprofit  
15 organization might be considered to receive the item as a  
16 donation;

17 (4) Whether the law-enforcement agency could use the  
18 item for any legitimate and authorized law enforcement or  
19 educational purpose;

20 (5) The chief executive's recommendation for the disposi-  
21 tion of each item; and

22 (6) If any unclaimed stolen property in the law-enforce-  
23 ment agency's possession consists of firearms or ammunition,  
24 a description of the best efforts used by the chief executive  
25 to determine if the firearm has been lost by, stolen or  
26 otherwise unlawfully obtained from an innocent owner prior  
27 to its disposition by public auction or as otherwise required  
28 by section five of this article.

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

1 Within thirty days of the receipt of an unclaimed stolen  
2 property report, the Treasurer shall send a response to the  
3 law-enforcement agency submitting it. For each item  
4 identified in the unclaimed stolen property report, the  
5 Treasurer shall either require that it be delivered to the

6 Treasurer, authorize the law-enforcement agency to sell it at  
7 a public sale, authorize the law-enforcement agency to  
8 donate it to a nonprofit organization, authorize the law-  
9 enforcement agency to use it for any legitimate and autho-  
10 rized law enforcement or educational purpose, or authorize  
11 the law-enforcement agency either to sell it at a public sale,  
12 to donate it to a nonprofit organization, or to use it for any  
13 legitimate and authorized law enforcement or educational  
14 purpose. However, the treasurer may not authorize the law-  
15 enforcement agency to donate any firearms or ammunition.  
16 The sale of any firearms or ammunition by the law enforce-  
17 ment agency must be at a public sale to persons licensed as  
18 firearms collectors, dealers, importers or manufacturers  
19 under the provisions of 18 U. S. C. §§921 et seq. and autho-  
20 rized to receive firearms under the terms of their license. If  
21 the Treasurer determines that any item identified in an  
22 unclaimed stolen property report is of such value that it  
23 should be processed by the Treasurer's office, the Treasurer  
24 shall have the authority to require that the item be delivered  
25 to the treasurer.

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

1 (a) Except as provided in section three of this article,  
2 subject to the duty to return firearms to innocent owners  
3 pursuant to subsection (b) of this section, all firearms, as  
4 defined in section two, article seven, chapter sixty-one of  
5 this code, that are forfeited or abandoned to any law-  
6 enforcement agency of this state or a political subdivision of  
7 this state, including the West Virginia Division of Natural  
8 Resources, or that are otherwise acquired by the state or a  
9 political subdivision of the state and are no longer needed,  
10 shall be transferred to the State Treasurer for disposal as  
11 provided in this section.

12 (b) Except as provided in section three of this article,  
13 within thirty days of the receipt of an unclaimed stolen  
14 property report, the State Treasurer shall coordinate best  
15 efforts with the reporting law-enforcement agency to  
16 transfer the firearms and ammunition to the State Treasurer  
17 for disposal as provided in subsection (e).

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

26 (d) Upon determination and verification that a lawful  
27 owner is unavailable or ineligible to receive or possess a  
28 firearm under state or federal law, reporting enforcement  
29 agencies may trade the firearms and ammunition to persons  
30 licensed as firearms collectors, dealers, importers or manu-  
31 facturers under the provisions of 18 U. S. C. §§921 *et seq.* and  
32 authorized to receive firearms under the terms of their  
33 license, in exchange for new weapons or ammunition, or  
34 appropriate the firearms and ammunition for law-enforce-  
35 ment agency use.

36 (e) Except as provided in subsections (c),(d) and (f) of this  
37 section, the State Treasurer shall dispose of the firearms that  
38 it receives under subsection (a) by sale at public auction to  
39 persons licensed as firearms collectors, dealers, importers or  
40 manufacturers under the provisions of 18 U. S. C. §§921 *et*  
41 *seq.* and authorized to receive firearms under the terms of  
42 their license.

43 (1) The auctions required by this subsection may occur  
44 online on a rolling basis or at live events but in no event may  
45 occur less frequently than once every six months.

46 (2) The State Treasurer shall retain only the net proceeds  
47 necessary to cover the costs of administering this section,  
48 with any surplus to be transferred to the general fund of the  
49 state: *Provided*, That an agency may be reimbursed for any  
50 decommissioned firearms formerly in use by the agency that  
51 are sold under this section: *Provided however*, That an  
52 agency may apply to the State Treasurer for payment of the  
53 net proceeds generated by the sale of any property by the  
54 State Treasurer pursuant to this section.

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

58       (f) The requirements of subsection (d) do not apply to a  
59 firearm that the chief executive of the law-enforcement  
60 agency or his or her designee certifies is unsafe for use  
61 because of wear, damage, age or modification, and any such  
62 firearm shall at the discretion of the superintendent be  
63 transferred to the State Police forensic laboratory for  
64 training or experimental purposes or to a museum or histori-  
65 cal society or be destroyed.

66       (g) The State Treasurer shall keep records of all firearms  
67 acquired and disposed of under the provisions of this section,  
68 as well as the net proceeds of the sales and the disbursement  
69 of such proceeds, and shall maintain these records for not  
70 less than ten years from the date on which a firearm is  
71 disposed of or on which a disbursement of funds is made, as  
72 the case may be.

73       (h) Any firearm or ammunition subject to forfeiture  
74 proceedings which is ordered returned to any law enforce-  
75 ment agency for the purposes of public sale or auction may  
76 only be sold or transferred to persons licensed as firearms  
77 collectors, dealers, importers or manufacturers under the  
78 provisions of 18 U. S. C. §§921 *et seq.*