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**H. B. 4495**

(By Delegates Moye, Williams, Shaver, Perry,  
R. Phillips, Ferro and Hall)

[Introduced February 9, 2012; referred to the  
Committee on the Judiciary.]

A BILL 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.

*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.**

(a) Prior to September 1, 1997, and on or before September 1,  
of each succeeding year, each law-enforcement agency which has  
unclaimed stolen property in its possession shall file an unclaimed  
stolen property report with the Treasurer which identifies all

1 unclaimed stolen property in its possession at the time the report  
2 is filed.

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

6 (1) A description of each item;

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

1 section five of this article.

2 **§36-8A-3. Treasurer's response to unclaimed stolen property**  
3 **report.**

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

1 **§36-8A-5. Regarding the disposition of firearms in state custody.**

2 ~~(a) If the chief executive determined in the law enforcement~~  
3 ~~agency's unclaimed stolen property report that any firearms or~~  
4 ~~ammunition in the law enforcement agency's possession are not of a~~  
5 ~~sufficient quality to be traded in on new weapons or ammunition for~~  
6 ~~the agency or appropriated for the agency's use, the chief~~  
7 ~~executive shall cause the firearms or ammunition to be delivered to~~  
8 ~~the treasurer for destruction.~~

9 ~~(b) If the chief executive determined in the law enforcement~~  
10 ~~agency's unclaimed stolen property report that any firearms or~~  
11 ~~ammunition in the law enforcement agency's possession are of a~~  
12 ~~sufficient quality to be traded in on new weapons or ammunition for~~  
13 ~~the agency or appropriated for the agency's use, the chief~~  
14 ~~executive shall cause the firearms or ammunition to be traded in on~~  
15 ~~new weapons or ammunition or appropriated for the agency's use.~~  
16 ~~After any trade-in or appropriation under this subsection, the~~  
17 ~~law enforcement agency shall file a report with the treasurer and~~  
18 ~~the state Tax Department on the trade-in or appropriation.~~

19 (a) Subject to the duty to return firearms to innocent owners  
20 pursuant to subsection (b) of this section, all firearms, as  
21 defined in section two, article seven, chapter sixty-one of this  
22 code, that are forfeited or abandoned to any law-enforcement agency  
23 of this state or a political subdivision of this state, including  
24 the West Virginia Division of Natural Resources, or that are

1 otherwise acquired by the state or a political subdivision of the  
2 state and are no longer needed, shall be transferred to the West  
3 Virginia State Police for disposal as provided in this section.

4 (b) Prior to the disposal of any firearm that has been  
5 forfeited or abandoned to the state, the State Police shall use  
6 best efforts to determine if the firearm has been lost by, stolen,  
7 or otherwise unlawfully obtained from an innocent owner, and if so,  
8 shall return the firearm to its innocent owner, if ascertainable,  
9 unless that person is ineligible to receive or possess a firearm  
10 under state or federal law.

11 (c) Except as provided in subsections (b) and (d), the State  
12 Police shall dispose of the firearms that it receives under  
13 subsection (a) by sale at public auction to persons licensed as  
14 firearms collectors, dealers, importers, or manufacturers under the  
15 provisions of 18 U.S.C. §§921 et seq. and authorized to receive  
16 firearms under the terms of their license.

17 (1) The auctions required by this subsection may occur online  
18 on a rolling basis or at live events but in no event may occur less  
19 frequently than once every three months.

20 (2) The department shall retain only the net proceeds  
21 necessary to cover the costs of administering this section, with  
22 any surplus to be transferred to the school fund for the purpose of  
23 offsetting the price of new textbooks or instructional software for  
24 students or for the implementation of the physical education

1 curriculum: *Provided*, That an agency may be reimbursed for any  
2 decommissioned firearms formerly in use by the agency that are sold  
3 under this section.

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

7 (d) The requirements of subsection (c) do not apply to a  
8 firearm that the Superintendent of the State Police or his or her  
9 designee certifies is unsafe for use because of wear, damage, age,  
10 or modification, and any such firearm shall at the discretion of  
11 the superintendent be transferred to the State Police forensic  
12 laboratory for training or experimental purposes or to a museum or  
13 historical society or be destroyed.

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

NOTE: The purpose of this bill is to require West Virginia law-enforcement agencies to return forfeited or abandoned firearms to their lawful and legal owners. This would also require them to make all available efforts to make available for sale the firearm in question to licensed individual dealers.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

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be added.