

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 149

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

[Originating in the Committee on Finance;
reported February 27, 2012.]

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.

1 (a) ~~Prior to September 1, 1997, and on~~ On or before
2 September 1, of each ~~succeeding~~ year, each law-enforcement
3 agency which has unclaimed stolen property in its possession
4 shall file an unclaimed stolen property report with the
5 treasurer which identifies all unclaimed stolen property in
6 its possession at the time the report is filed.

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

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

13 (2) An estimated value for each item;

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

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

21 (5) The chief executive's recommendation for the dispo-
22 sition of each item; and

23 (6) If any unclaimed stolen property in the law-enforce-
 24 ment agency's possession consists of firearms or ammunition,
 25 ~~the chief executive's determination of whether the firearms~~
 26 ~~or ammunition are of a sufficient quality to be traded in on~~
 27 ~~new weapons or ammunition for the law-enforcement agency~~
 28 ~~or appropriated for the law-enforcement agency's use: a~~
 29 description of the best efforts used by the chief executive to
 30 determine if the firearm has been lost by, stolen or otherwise
 31 unlawfully obtained from an innocent owner or its disposi-
 32 tion by public auction or otherwise required by section five
 33 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 ~~except~~
 5 ~~firearms and ammunition which the chief executive deter-~~
 6 ~~mined to be of sufficient quality to trade in on new weapons~~
 7 ~~or ammunition or to appropriate for the law-enforcement~~
 8 ~~agency's use,~~ the treasurer shall either require that it be
 9 delivered to the treasurer, authorize the law-enforcement

10 agency to sell it at a public sale, authorize the law-enforce-
11 ment agency to donate it to a nonprofit organization,
12 authorize the law-enforcement agency to use it for any
13 legitimate and authorized law enforcement or educational
14 purpose, or authorize the law-enforcement agency either to
15 sell it at a public sale, to donate it to a nonprofit organiza-
16 tion, or to use it for any legitimate and authorized law
17 enforcement or educational purpose. ~~However, the treasurer~~
18 ~~may not authorize the law-enforcement agency to sell or~~
19 ~~donate any firearms or ammunition.~~ If the treasurer deter-
20 mines that any item identified in an unclaimed stolen
21 property report is of such value that it should be processed
22 by the treasurer's office, the treasurer shall have the author-
23 ity to require that the item be delivered to the treasurer.

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

1 (a) Subject to the duty to return firearms to innocent
2 owners pursuant to subsection (b) of this section, all fire-
3 arms, as defined in section two, article seven, chapter sixty-
4 one of this code, that are forfeited or abandoned to any law-
5 enforcement agency of this state or a political subdivision of
6 this state, including the West Virginia Division of Natural
7 Resources, or that are otherwise acquired by the state or a

8 political subdivision of the state and are no longer needed,
9 shall be transferred to the State Treasurer for disposal as
10 provided in this section.

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

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

24 (d) Except as provided in subsections (c) and (e), the
25 State Treasurer shall dispose of the firearms that it receives
26 under subsection (a) by sale at public auction to persons
27 licensed as firearms collectors, dealers, importers or manu-
28 facturers under the provisions of 18 U. S. C. §§921 *et seq.* and

29 authorized to receive firearms under the terms of their
30 license.

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

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

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

43 (e) The requirements of subsection (d) do not apply to a
44 firearm that the chief executive of the law-enforcement
45 agency or his or her designee certifies is unsafe for use
46 because of wear, damage, age or modification, and any such
47 firearm shall at the discretion of the superintendent be
48 transferred to the State Police forensic laboratory for
49 training or experimental purposes or to a museum or histori-
50 cal society or be destroyed.

51 (f) The State Treasurer shall keep records of all firearms
52 acquired and disposed of under the provisions of this section,
53 as well as the net proceeds of the sales and the disbursement
54 of such proceeds, and shall maintain these records for not
55 less than ten years from the date on which a firearm is
56 disposed of or on which a disbursement of funds is made, as
57 the case may be.

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