

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE DRH30126-LH-40B (2/2)

Short Title: Dispose of Firearms/Benefit Law Enforcement. (Public)

Sponsors: Representative Hilton.

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A
3 FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE
4 COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM FOR
5 OFFICIAL USE OR MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO
6 A FEDERALLY LICENSED FIREARMS DEALER AND MAY USE THE
7 PROCEEDS FROM THE SALE OF UNCLAIMED FIREARMS FOR LAW
8 ENFORCEMENT PURPOSES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 15-11.1(b1) reads as rewritten:

11 "(b1) Notwithstanding subsections (a) and (b) of this section or any other provision
12 of law, if the property seized is a firearm and the district attorney determines the firearm
13 is no longer necessary or useful as evidence in a criminal trial, the district attorney, after
14 notice to all parties known or believed by the district attorney to have an ownership or a
15 possessory interest in the firearm, including the defendant, shall apply to the court for an
16 order of disposition of the firearm. The judge, after hearing, may order the disposition
17 of the firearm in one of the following ways:

- 18 (1) By ordering the firearm returned to its rightful owner, when the
19 rightful owner is someone other than the defendant and upon findings
20 by the court (i) that the person, firm, or corporation determined by the
21 court to be the rightful owner is entitled to possession of the firearm
22 and (ii) that the person, firm, or corporation determined by the court to
23 be the rightful owner of the firearm was unlawfully deprived of the
24 same or had no knowledge or reasonable belief of the defendant's
25 intention to use the firearm unlawfully.
- 26 (2) By ordering the firearm returned to the defendant, but only if the
27 defendant is not convicted of any criminal offense in connection with

1 the possession or use of the firearm, the defendant is the rightful owner
2 of the firearm, and the defendant is not otherwise ineligible to possess
3 such firearm.

4 (3) By ordering the firearm turned over to be destroyed by the sheriff of
5 the county in which the firearm was seized or by his duly authorized
6 agent. The sheriff shall maintain a record of the destruction of the
7 firearm.

8 (4) By ordering the firearm turned over to a law enforcement agency in
9 the county of trial for (i) the official use of the agency or (ii) for sale,
10 trade, or exchange by the agency to a federally licensed firearm dealer
11 in accordance with due process of law by the agency. The court may
12 order this disposition of the firearm only upon the written request by
13 the head or chief of the law enforcement agency and only if the firearm
14 has a legible, unique identification number. If the law enforcement
15 agency sells the firearm, then the proceeds of the sale shall be remitted
16 to the appropriate county finance officer as provided by
17 G.S. 115C-452 to be used to maintain free public schools. The
18 receiving law enforcement agency shall maintain a record and
19 inventory of all firearms received pursuant to this subdivision.

20 This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of
21 firearms used only in connection with a violation of Article 22 of Chapter 113 of the
22 General Statutes or any local wildlife hunting ordinance."

23 **SECTION 2.** Article 2 of Chapter 15 of the General Statutes is amended by
24 adding a new section to read:

25 **"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial**
26 **evidence.**

27 (a) Definition. – For purposes of this section, the term "unclaimed firearm"
28 means a firearm that is found or received by a law enforcement agency and that remains
29 unclaimed by the person who may be entitled to it for a period of 180 days after receipt
30 and publication of notice by the custodial law enforcement agency as required by this
31 section. The term does not include a firearm that is seized and disposed of pursuant to
32 G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

33 (b) Published Notice of Unclaimed Firearm. – When a law enforcement agency
34 finds or receives a firearm, the agency shall publish at least one notice in a newspaper
35 published in the county in which the agency is located stating that the firearm is
36 unclaimed and is in the custody of the law enforcement agency. The notice shall further
37 state that the firearm may be sold or otherwise disposed of unless the firearm is claimed
38 within 180 days of the published notice. The notice shall require any person who claims
39 any interest in the firearm to make and establish the claim or interest not later than 30
40 days from the date of the publication of the notice. The notice shall contain a brief
41 description of the firearm and any other information that the chief or head of the law
42 enforcement agency may consider necessary or advisable to reasonably inform the
43 public about the firearm.

1 (c) If the firearm remains unclaimed or if satisfactory evidence of its ownership
2 is not presented to the law enforcement agency within a period of 180 days after the
3 publication of the notice, then the person who found the firearm and turned it over to the
4 law enforcement agency may claim the firearm provided the person satisfies the
5 custodial law enforcement agency holding the firearm that the person is qualified under
6 State and federal law to possess the firearm and also presents a pistol permit issued in
7 accordance with Article 52A of Chapter 14 of the General Statutes.

8 (d) If the firearm remains unclaimed or if satisfactory evidence of its ownership
9 is not presented to the law enforcement agency within a period of 180 days after the
10 publication of the notice, and the person who found the firearm does not claim it as
11 provided by subsection (c) of this section, then the head or chief of a law enforcement
12 agency may apply to the appropriate district court for an order of disposition of the
13 unclaimed firearm. The application shall be written.

14 (e) Disposition of Firearm. – The judge, after hearing, may order the disposition
15 of the firearm in one of the following ways:

16 (1) By ordering the firearm turned over to be destroyed by the sheriff of
17 the county in which the law enforcement agency applying for the order
18 of disposition is located or by the sheriff's duly authorized agent. The
19 sheriff shall maintain a record of the destruction of the firearm.

20 (2) By ordering the firearm turned over to the law enforcement agency
21 applying for the disposition of the firearm for (i) the official use of the
22 agency or (ii) for sale, trade, or exchange by the agency to a federally
23 licensed firearm dealer by the agency in accordance with due process
24 of law. The court may order this disposition of the firearm only if the
25 firearm has a legible, unique identification number.

26 (e) Disbursement of Proceeds of Sale. – If the law enforcement agency sells the
27 firearm, then the proceeds of the sale shall be retained by the law enforcement agency
28 and used for law enforcement purposes. The receiving law enforcement agency shall
29 maintain a record and inventory of all firearms received pursuant to this section."

30 **SECTION 3.** G.S. 14-269.1 reads as rewritten:

31 **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

32 Upon conviction of any person for violation of G.S. 14-269, G.S. 14-269.7, or any
33 other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269,
34 the deadly weapon with reference to which the defendant shall have been convicted
35 shall be ordered confiscated and disposed of by the presiding judge at the trial in one of
36 the following ways in the discretion of the presiding judge.

37 (1) By ordering the weapon returned to its rightful owner, but only when
38 such owner is a person other than the defendant and has filed a petition
39 for the recovery of such weapon with the presiding judge at the time of
40 the defendant's conviction, and upon a finding by the presiding judge
41 that petitioner is entitled to possession of same and that he was
42 unlawfully deprived of the same without his consent.

43 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

- 1 (4) By ordering such weapon turned over to the sheriff of the county in
2 which the trial is held or his duly authorized agent to be destroyed. The
3 sheriff shall maintain a record of the destruction thereof.
- 4 ~~(4a) By ordering the weapon, if the weapon has a legible unique~~
5 ~~identification number, turned over to a law enforcement agency in the~~
6 ~~county of trial for the official use of such agency, but only upon the~~
7 ~~written request by the head or chief of such agency. The receiving law~~
8 ~~enforcement agency shall maintain a record and inventory of all such~~
9 ~~weapons received.~~
- 10 (4b) By ordering the firearm turned over to a law enforcement agency in
11 the county of trial for (i) the official use of the agency or (ii) for sale,
12 trade, or exchange by the agency to a federally licensed firearm dealer
13 in accordance with due process of law by the agency. The court may
14 order this disposition of the firearm only upon the written request by
15 the head or chief of the law enforcement agency and only if the firearm
16 has a legible, unique identification number. If the law enforcement
17 agency sells the firearm, then the proceeds of the sale shall be remitted
18 to the appropriate county finance officer as provided by
19 G.S. 115C-452 to be used to maintain free public schools. The
20 receiving law enforcement agency shall maintain a record and
21 inventory of all firearms received pursuant to this subdivision.
- 22 (5) By ordering such weapon turned over to the North Carolina State
23 Bureau of Investigation's Crime Laboratory Weapons Reference
24 Library for official use by that agency. The State Bureau of
25 Investigation shall maintain a record and inventory of all such
26 weapons received.
- 27 (6) By ordering such weapons turned over to the North Carolina Justice
28 Academy for official use by that agency. The North Carolina Justice
29 Academy shall maintain a record and inventory of all such weapons
30 received."

31 **SECTION 4.** This act is effective when it becomes law.