

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1016

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

Sponsors: Representatives Hilton; Almond, Blackwood, Blust, Capps, Cleveland, Coates, Culp, Faison, Folwell, Frye, Gillespie, Hollo, Holloway, Johnson, Justus, Lewis, McGee, Rayfield, Setzer, Starnes, Steen, Walend, Walker, and Wiley.

Referred to: Judiciary II.

March 31, 2005

A BILL TO BE ENTITLED

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

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.

- 1 (2) By ordering the firearm returned to the defendant, but only if the
2 defendant is not convicted of any criminal offense in connection with
3 the possession or use of the firearm, the defendant is the rightful owner
4 of the firearm, and the defendant is not otherwise ineligible to possess
5 such firearm.
- 6 (3) By ordering the firearm turned over to be destroyed by the sheriff of
7 the county in which the firearm was seized or by his duly authorized
8 agent. The sheriff shall maintain a record of the destruction of the
9 firearm.
- 10 (4) 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 This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of
23 firearms used only in connection with a violation of Article 22 of Chapter 113 of the
24 General Statutes or any local wildlife hunting ordinance."

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

27 **"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial**
28 **evidence.**

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

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

1 enforcement agency may consider necessary or advisable to reasonably inform the
2 public about the firearm.

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

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

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

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

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

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

33 **"§ 14-269.1. Confiscation and disposition of deadly weapons.**

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

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

- 1 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.
2 (4) By ordering such weapon turned over to the sheriff of the county in
3 which the trial is held or his duly authorized agent to be destroyed. The
4 sheriff shall maintain a record of the destruction thereof.
5 ~~(4a) By ordering the weapon, if the weapon has a legible unique~~
6 ~~identification number, turned over to a law enforcement agency in the~~
7 ~~county of trial for the official use of such agency, but only upon the~~
8 ~~written request by the head or chief of such agency. The receiving law~~
9 ~~enforcement agency shall maintain a record and inventory of all such~~
10 ~~weapons received.~~
11 (4b) By ordering the firearm turned over to a law enforcement agency in
12 the county of trial for (i) the official use of the agency or (ii) for sale,
13 trade, or exchange by the agency to a federally licensed firearm dealer
14 in accordance with due process of law by the agency. The court may
15 order this disposition of the firearm only upon the written request by
16 the head or chief of the law enforcement agency and only if the firearm
17 has a legible, unique identification number. If the law enforcement
18 agency sells the firearm, then the proceeds of the sale shall be remitted
19 to the appropriate county finance officer as provided by
20 G.S. 115C-452 to be used to maintain free public schools. The
21 receiving law enforcement agency shall maintain a record and
22 inventory of all firearms received pursuant to this subdivision.
23 (5) By ordering such weapon turned over to the North Carolina State
24 Bureau of Investigation's Crime Laboratory Weapons Reference
25 Library for official use by that agency. The State Bureau of
26 Investigation shall maintain a record and inventory of all such
27 weapons received.
28 (6) By ordering such weapons turned over to the North Carolina Justice
29 Academy for official use by that agency. The North Carolina Justice
30 Academy shall maintain a record and inventory of all such weapons
31 received."

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