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DISPOSAL OF FIREARMS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions related to the disposal of firearms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that the Department of Public Safety contract with a federally licensed firearms dealer to act as the state-approved dealer for the state;
- ▶ provides that when a governmental agency disposes of a confiscated or unclaimed firearm, the governmental agency shall:
 - sell the firearm at public auction; or
 - give the firearm to the state-approved dealer to sell in accordance with the provisions of this bill;
- ▶ addresses the allocation of proceeds from the sale of a confiscated or unclaimed firearm; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **24-3-103**, as enacted by Laws of Utah 2013, Chapter 394

30 **53-5c-201**, as last amended by Laws of Utah 2015, Chapter 258

31 **53-5c-202**, as enacted by Laws of Utah 2013, Chapter 188

32 ENACTS:

33 **24-3-103.5**, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **24-3-103** is amended to read:

37 **24-3-103. Property no longer needed as evidence -- Disposition of property.**

38 (1) When the prosecuting attorney determines that property no longer needs to be held
39 as evidence, the prosecuting attorney may:

40 (a) petition the court to apply any property that is money towards restitution, fines,
41 fees, or monetary judgments owed by the owner of the property;

42 (b) petition the court for an order transferring ownership of any weapons to the seizing
43 agency for ~~[its]~~ the agency's use and disposal ~~[as the seizing agency determines]~~ in accordance
44 with applicable law, if the owner:

45 (i) is the person who committed the crime for which the weapon was seized; or

46 (ii) may not lawfully possess the weapon; or

47 (c) notify the agency that has possession of the property that the property may be:

48 (i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

49 (ii) disposed of, if the property is contraband.

50 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
51 the property to advise the owner that the property is to be returned.

52 (3) (a) Before the agency may release property to a person claiming ownership of the
53 property, the person shall establish ~~[to the agency pursuant to]~~ in accordance with Subsection

54 (3)(b) that the person:

55 (i) is the rightful owner; and

56 (ii) may lawfully possess the property.

57 (b) The person shall establish ownership under Subsection (3)(a) by providing to the
58 agency:

59 (i) identifying proof or documentation of ownership of the property; or
60 (ii) a notarized statement, if proof or documentation is not available.
61 (4) (a) When property is returned to the owner, a receipt listing in detail the property
62 returned shall be signed by the owner.

63 (b) The receipt shall be retained by the agency and a copy shall be provided to the
64 owner.

65 (5) [H] (a) Except as provided in Subsection (5)(b), if the agency is unable to locate the
66 rightful owner of the property or if the rightful owner is not entitled to lawfully possess the
67 property, the agency may:

68 [~~a~~] (i) apply the property to a public interest use;

69 [~~b~~] (ii) sell the property at public auction and apply the proceeds of the sale to a
70 public interest use; or

71 [~~c~~] (iii) destroy the property if [~~it~~] the property is unfit for a public interest use or for
72 sale.

73 (b) If the property described in Subsection (5)(a) is a firearm, the agency shall dispose
74 of the firearm in accordance with Section 24-3-103.5.

75 (6) Before applying the property or the proceeds from the sale of the property to a
76 public interest use, the agency shall obtain from the legislative body of its jurisdiction:

77 (a) permission to apply the property or the proceeds to public interest use; and

78 (b) the designation and approval of the public interest use of the property or the
79 proceeds.

80 Section 2. Section 24-3-103.5 is enacted to read:

81 **24-3-103.5. Disposition of firearms no longer needed as evidence.**

82 (1) As used in this section:

83 (a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by
84 an agency under Section 24-3-103 or 53-5c-202.

85 (b) "Department" means the Department of Public Safety created in Section 53-1-103.

86 (c) "Federally licensed firearms dealer" means a person:

87 (i) licensed as a dealer under 18 U.S.C. Sec. 923; and

88 (ii) engaged in the business of selling firearms.

89 (d) "Public interest use" means the same as that term is defined in Section 24-1-102.

90 (e) "State-approved dealer" means the federally licensed firearms dealer who contracts
91 with the department under Subsection (4).

92 (2) An agency shall dispose of a confiscated or unclaimed firearm by:

93 (a) selling or destroying the confiscated or unclaimed firearm in accordance with
94 Subsection (3); or

95 (b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or
96 destroy in accordance with Subsection (4) and the agreement between the state-approved dealer
97 and the department.

98 (3) (a) An agency that elects to dispose of a confiscated or unclaimed firearm under
99 Subsection (2)(a) shall:

100 (i) sell the confiscated or unclaimed firearm at public auction and apply the proceeds of
101 the sale to a public interest use; or

102 (ii) if the agency determines that the condition of a confiscated or unclaimed firearm
103 makes the firearm unfit for sale, destroy the firearm.

104 (b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed
105 firearm to a public interest use, the agency shall obtain from the legislative body of the agency's
106 jurisdiction:

107 (i) permission to apply the proceeds of the sale to a public interest use; and

108 (ii) the designation and approval of the public interest use to which the agency applies
109 the proceeds.

110 (4) (a) The department shall, in accordance with Title 63G, Chapter 6a, Utah
111 Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all
112 confiscated or unclaimed firearms in the state.

113 (b) An agreement executed in accordance with Subsection (4)(a) shall:

114 (i) address the amount of money that the federally licensed firearms dealer is entitled to
115 retain from the sale of each confiscated or unclaimed firearm as compensation for the federally
116 licensed firearms dealer's performance under the agreement;

117 (ii) require the federally licensed firearms dealer to donate, on behalf of the state, all
118 proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in
119 Subsection (4)(b)(i), to an organization that:

120 (A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

- 121 (B) complies with any applicable licensing or registration requirements in the state;
122 (C) primarily helps the families of law enforcement officers in the state who die in the
123 line of duty;
124 (D) gives financial assistance to the families of law enforcement officers in the state
125 who die in the line of duty; and
126 (E) provides other assistance to children of active law enforcement officers, including
127 scholarships;
128 (iii) state that if the federally licensed firearms dealer determines that the condition of a
129 confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed
130 firearms dealer shall destroy the firearm; and
131 (iv) provide a procedure by which the department can ensure that the federally licensed
132 firearms dealer complies with the provisions of the agreement and applicable law.

133 Section 3. Section **53-5c-201** is amended to read:

134 **53-5c-201. Voluntary commitment of a firearm by owner cohabitant -- Law**
135 **enforcement to hold firearm.**

136 (1) (a) An owner cohabitant may voluntarily commit a firearm to a law enforcement
137 agency for safekeeping if the owner cohabitant believes that another cohabitant is an immediate
138 threat to:

- 139 (i) himself or herself;
140 (ii) the owner cohabitant; or
141 (iii) any other person.

142 (b) A law enforcement agency may not hold a firearm under this section if the law
143 enforcement agency obtains the firearm in a manner other than the owner cohabitant
144 voluntarily presenting, of [~~his or her~~] the owner cohabitant's own free will, the firearm to the
145 law enforcement agency at the agency's office.

146 (2) Unless a firearm is an illegal firearm subject to Section **53-5c-202**, a law
147 enforcement agency that receives a firearm in accordance with this chapter shall:

- 148 (a) record:
149 (i) the owner cohabitant's name, address, and phone number;
150 (ii) the firearm serial number; and
151 (iii) the date that the firearm was voluntarily committed;

152 (b) require the owner cohabitant to sign a document attesting that the owner cohabitant
153 has an ownership interest in the firearm;

154 (c) hold the firearm in safe custody for 60 days after the day on which [it] the firearm is
155 voluntarily committed; and

156 (d) upon proof of identification, return the firearm to:

157 (i) the owner cohabitant after the expiration of the 60-day period or, if the owner
158 cohabitant requests return of the firearm before the expiration of the 60-day period, at the time
159 of the request; or

160 (ii) [to] an owner other than the owner cohabitant in accordance with Section
161 [53-5c-202](#).

162 (3) The law enforcement agency shall hold the firearm for an additional 60 days:

163 (a) if the initial 60-day period expires; and

164 (b) the owner cohabitant requests that the law enforcement agency hold the firearm for
165 an additional 60 days.

166 (4) A law enforcement agency may not request or require that the owner cohabitant
167 provide the name or other information of the cohabitant who poses an immediate threat or any
168 other cohabitant.

169 (5) Notwithstanding an ordinance or policy to the contrary adopted in accordance with
170 Section [63G-2-701](#), a law enforcement agency shall destroy a record created under Subsection
171 (2), Subsection [53-5c-202\(4\)\(b\)\(iii\)](#), or any other record created in the application of this
172 chapter no later than five days after:

173 (a) returning a firearm in accordance with Subsection (2)(d); or

174 (b) [~~appropriating, selling, or destroying~~] disposing of the firearm in accordance with
175 Section [53-5c-202](#).

176 (6) Unless otherwise provided, the provisions of Title 77, Chapter 24a, Lost or Mislaid
177 Personal Property, do not apply to a firearm received by a law enforcement agency in
178 accordance with this chapter.

179 (7) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held
180 in accordance with this chapter.

181 Section 4. Section [53-5c-202](#) is amended to read:

182 **[53-5c-202](#). Illegal firearms confiscated -- Disposition of unclaimed firearm.**

183 (1) If a law enforcement agency receives a firearm in accordance with Section
184 [53-5c-201](#), and the firearm is an illegal firearm, the law enforcement agency shall:

185 (a) notify the owner cohabitant attempting to voluntarily commit the firearm that the
186 firearm is an illegal firearm; and

187 (b) confiscate the firearm and dispose of ~~[it as the head of the law enforcement agency~~
188 ~~determines]~~ the firearm in accordance with Section [24-3-103.5](#).

189 (2) (a) If a law enforcement agency cannot, after a reasonable attempt, locate an owner
190 cohabitant to return a firearm in accordance with Section [53-5c-201](#), the law enforcement
191 agency ~~[may:]~~ shall dispose of the firearm in accordance with Section [24-3-103.5](#).

192 ~~[(i) appropriate the firearm to public interest use as provided in Subsection (3);]~~

193 ~~[(ii) sell the firearm at public auction as provided by law and appropriate the proceeds~~
194 ~~of the sale to public interest use; or]~~

195 ~~[(iii) destroy the firearm if unfit for sale.]~~

196 (b) A law enforcement agency ~~[may take an action in accordance with]~~ may not
197 dispose of a firearm under Subsection (2)(a) [no earlier than] before one year after the day on
198 which the owner cohabitant initially voluntarily commits the firearm in accordance with
199 Section [53-5c-201](#).

200 ~~[(3) Before appropriating the firearm to public interest use, the law enforcement~~
201 ~~agency, having possession of the firearm, shall obtain from the legislative body of its~~
202 ~~jurisdiction:]~~

203 ~~[(a) permission to appropriate the firearm to public interest use; and]~~

204 ~~[(b) the designation and approval of the public interest use of the firearm.]~~

205 ~~[(4)]~~ (3) (a) If a person other than an owner cohabitant who voluntarily commits a

206 firearm in accordance with Section [53-5c-201](#) claims ownership of the firearm, the person may:

207 (i) request that the law enforcement agency return the firearm in accordance with
208 Subsection ~~[(4)]~~ (3)(b); or

209 (ii) petition the court for the firearm's return in accordance with Subsection ~~[(4)]~~ (3)(c).

210 (b) Except as provided in Section [53-5c-201](#), the law enforcement agency shall return a
211 firearm to a person other than an owner cohabitant who claims ownership of the firearm if:

212 (i) the 60-day period described in Section [53-5c-201](#) has expired;

213 (ii) the person provides identification; and

214 (iii) the person signs a document attesting that the person has an ownership interest in
215 the firearm.

216 (c) After sufficient notice is given to the prosecutor, the court may order that the
217 firearm be:

218 (i) returned to the rightful owner as determined by the court; or

219 [~~(ii) converted to public interest use; or~~]

220 [~~(iii) destroyed.~~]

221 (ii) disposed of in accordance with Section [24-3-103.5](#).

222 (d) A law enforcement agency shall return a firearm ordered returned to the rightful
223 owner as expeditiously as possible after a court determination.

Legislative Review Note
Office of Legislative Research and General Counsel