

1 AN ACT relating to the destruction of firearms.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 500.090 is amended to read as follows:

4 (1) Except as provided in KRS 500.092, all property which is subject to forfeiture
5 under any section of the Kentucky Penal Code shall be disposed of in accordance
6 with this section.

7 (a) Property~~[other than firearms]~~ which is forfeited under any section of this code
8 may, upon order of the trial court, be destroyed by the sheriff of the county in
9 which the conviction was obtained.

10 (b) Property other than firearms which is forfeited under any section of this code
11 may, upon order of the trial court, be sold at public auction. The expenses of
12 keeping and selling such property and the amount of all valid recorded liens
13 that are established by intervention as being bona fide shall be paid out of the
14 proceeds of the sale. The balance shall be paid to:

- 15 1. The state, if the property was seized by an agency of the state or peace
16 officer thereof;
- 17 2. The county, if the property was seized by the sheriff or an agency or
18 peace officer of the county;
- 19 3. The Department of Fish and Wildlife Resources, if the property was
20 seized by a peace officer of the Department of Fish and Wildlife or was
21 seized by any other officer for violation of KRS Chapter 150;
- 22 4. The city, if the property was seized by the city or by an agency or peace
23 officer thereof and the property was delivered to the city property clerk;
- 24 5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten
25 percent (10%) of the proceeds), if the property was seized by the city or
26 by an agency or peace officer thereof and the property was delivered to
27 the sheriff or the county police; or

1 6. The state, if the property was seized by any combination of agencies
2 listed above.

3 (c) Subject to the duty to return confiscated firearms and ammunition to innocent
4 owners pursuant to this section, all firearms and ammunition confiscated by a
5 state or local law enforcement agency, all firearms ordered forfeited by a
6 court, and all abandoned firearms and ammunition coming into the custody of
7 a state or local law enforcement agency and not retained for official use shall
8 be destroyed within ninety (90) days of abandonment, confiscation, release
9 of the weapon as evidence, or forfeiture by a court, whichever occurs
10 later~~transferred to the Department of Kentucky State Police for disposition as~~
11 ~~provided by KRS 16.220. The transfer shall occur not more than ninety (90)~~
12 ~~days after the abandonment of the firearm or ammunition to the law~~
13 ~~enforcement agency or not more than ninety (90) days after its confiscation,~~
14 ~~unless a court requires the firearm or ammunition for use as evidence, in~~
15 ~~which case it shall be transferred to the Department of Kentucky State Police~~
16 ~~not more than ninety (90) days following the order of forfeiture by the court or~~
17 ~~after the court returns the firearm or ammunition from use as evidence. Prior~~
18 ~~to the sale of any firearm or ammunition, the law enforcement agency shall~~
19 ~~make a bona fide attempt to determine if the firearm or ammunition to be sold~~
20 ~~has been stolen or otherwise unlawfully obtained from an innocent owner and~~
21 ~~return the firearm and ammunition to its lawful innocent owner, unless that~~
22 ~~person is ineligible to purchase a firearm under federal law. This subsection~~
23 ~~relating to auction of firearms and ammunition shall not apply to firearms and~~
24 ~~ammunition auctioned by the Department of Fish and Wildlife that may be~~
25 ~~sold to individual purchasers residing in Kentucky who are eligible under~~
26 ~~federal law to purchase firearms and ammunition of the type auctioned].~~

27 (d) If property which is forfeited under any section of this code is determined by

1 the trial court to be worthless, encumbered with liens in excess of its value, or
2 otherwise a burdensome asset, the court may abandon any interest in such
3 property. Property which is abandoned pursuant to this section shall be
4 returned to the lawful claimant upon payment of expenses for keeping the
5 property.

6 (e) Property which is forfeited under any section of this code may, upon order of
7 the trial court, be retained for official use in the following manner. Property
8 which has been seized by an agency of the state may be retained for official
9 state use. Property which has been seized by an agency of county, city, or
10 urban-county government may be retained for official use by the government
11 whose agency seized the property or for official state use. Property seized by
12 any other unit of government may be retained only for official state use. The
13 expenses for keeping and transferring such property shall be paid by the unit
14 of government by which the property is retained.

15 (2) Money which has been obtained or conferred in violation of any section of this code
16 shall, upon conviction, be forfeited for the use of the state. This subsection shall not
17 apply when, during the course of the proceeding in which the conviction is
18 obtained, the person from whom said money was unlawfully acquired is identified.

19 (3) Property forfeited under any section of this code shall be disposed of in accordance
20 with this section only after being advertised pursuant to KRS Chapter 424. This
21 subsection shall not apply to property which is designed and suitable only for
22 criminal use or to money forfeited under subsection (2) of this section.

23 (4) (a) The trial court shall remit the forfeiture of property when the lawful claimant:
24 1.{(a)} Asserts his or her claim before disposition of the property pursuant
25 to this section;
26 2.{(b)} Establishes his or her legal interest in the property; and
27 3.{(c)} Establishes that the unlawful use of the property was without his or

1 her knowledge and consent. This subsection shall not apply to a
2 lienholder of record when the trial court elects to dispose of the property
3 pursuant to subsection (1)(b) of this section.

4 **(b) Prior to returning a stolen firearm to a lawful owner, the law enforcement**
5 **agency shall determine whether or not the lawful owner is eligible to**
6 **possess a firearm under federal law. If the lawful owner of the firearm is**
7 **ineligible to possess a firearm under federal law, the law enforcement**
8 **agency shall destroy the firearm.**

- 9 (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
- 10 (6) Before property which has had its identity obscured in violation of KRS 514.120
11 may be sold or retained for official use as provided in this section, the court shall
12 cause a serial or other identifying number to be placed thereon, and a record of the
13 number assigned shall be placed in the court order authorizing the sale or retention
14 of the property. This number shall be assigned, whenever applicable, in consultation
15 with the Department of Kentucky State Police and any other state or federal
16 regulatory agency. The purchaser of the property shall be given a document stating
17 that the property had been forfeited pursuant to law and that a number, shown on
18 the document, has been assigned which shall be deemed as compliance of the owner
19 with KRS 514.120. When property is returned to an owner pursuant to this section
20 and its identity has been obscured by another person in violation of KRS 514.120,
21 the court shall provide a document to the owner relieving him or her of liability for
22 its continued possession. This document shall serve as evidence of compliance with
23 KRS 514.120 by the owner or any person to whom he or she lawfully disposes of
24 the property. This section shall not apply to any person after property has been sold
25 or returned in compliance with this section who violates the provisions of KRS
26 514.120 with respect to that property.
- 27 (7) Before forfeiture of any property under this section, it shall be the duty of the trial

1 court to determine if a lawful owner or claimant to the property has been identified
2 or is identifiable. If a lawful owner or claimant has been identified or is identifiable,
3 the court shall notify the owner or claimant that the property is being held and
4 specify a reasonable period of time during which the claim may be made or may, in
5 lieu thereof, order the return of the property to the lawful owner or claimant. If the
6 lawful owner or claimant does not assert his or her claim to the property after
7 notification or if he or she renounces his or her claim to the property, the property
8 shall be disposed of as provided in this section. It shall be the duty of all peace
9 officers and other public officers or officials having knowledge of the lawful owner
10 or claimant of property subject to forfeiture to report the same to the trial court
11 before the act of forfeiture occurs.

12 ➔Section 2. KRS 237.090 is amended to read as follows:

13 Any firearm or ammunition forfeited pursuant to KRS 237.060 to 237.090 shall, upon
14 order of a court of competent jurisdiction, be **destroyed**, disposed of, or retained as
15 provided in **Section 1 of this Act**~~[KRS 500.090]~~.

16 ➔Section 3. KRS 150.120 is amended to read as follows:

- 17 (1) The commissioner, all conservation officers, persons appointed by the
18 commissioner, and all peace officers and their deputies shall seize and take
19 possession of any and all furs, wildlife, guns, dogs, instruments, boats or devices
20 which have been taken, used, transported or possessed contrary to any law or
21 regulation adopted under this chapter. Upon complaint showing probable cause for
22 believing that any of the wildlife protected by any law or regulation are illegally
23 kept in any building, car or receptacle, any court having jurisdiction may issue a
24 search warrant and cause the same to be searched. Any wildlife, furs, guns, dogs,
25 instruments, or devices seized in accordance with this section shall be impounded
26 by the arresting officer and shall be taken before the court trying the person arrested.
- 27 (2) Upon conviction, the court trying the case shall have the discretion of determining

1 whether or not any of the things seized under the provisions of subsection (1) of this
2 section shall be declared contraband. Any wildlife, fur or dog taken, and any device
3 used or possessed contrary to the provisions of this chapter, or any regulations
4 adopted hereunder, is subject to being declared contraband. When any such item is
5 declared contraband, the court shall enter an order accordingly. A copy of the order
6 shall be forwarded to the commissioner and the contraband shall be placed in the
7 custody of the arresting officer, to be delivered to the commissioner.

8 (3) (a) The commissioner may sell to the residents of this state, at the highest market
9 price obtainable, with the approval of the Governor and the Finance and
10 Administration Cabinet all contraband except firearms which comes to his
11 possession under the order of any court, or which has been seized under this
12 chapter and declared to be contraband under any law relating to fish or
13 wildlife. All proceeds arising from the sale of contraband articles shall be paid
14 into the game and fish fund. A record of the sale, including the name of the
15 purchaser and the price paid, shall be kept by the commissioner.

16 (b) Firearms shall be retained for official use or destroyed in compliance with
17 Section 1 of this Act within ninety (90) days of abandonment, confiscation,
18 release of the weapon as evidence, or forfeiture by a court, whichever
19 occurs later.

20 (4) Any device or contrivance, the use of which is not expressly recognized and
21 sanctioned by the provisions of this chapter for the taking of wildlife, is hereby
22 declared to be an illegal device. No person shall have in his possession any illegal
23 device or other thing prohibited by law or by any regulation adopted under this
24 chapter for the taking of wildlife.

25 ➔Section 4. KRS 95.435 is amended to read as follows:

26 (1) The police department in cities of the home rule class and urban-county
27 governments shall take charge of property, within their jurisdiction, alleged to be or

1 suspected of being the proceeds of crime, property taken from the person of a
2 prisoner, lost or abandoned property taken into the custody of any member of the
3 police force or criminal court, and property taken from persons supposed to be
4 insane, intoxicated or otherwise incapable of taking care of themselves. The officer
5 or court having custody of such property shall as soon as practicable deliver it into
6 the custody of the police department.

7 (2) All such property shall be particularly described and registered by the police
8 department in a book kept for that purpose, containing the name of the owner, if
9 ascertained, the place where found, the name of the person from whom taken, with
10 the general circumstances, the date of its receipt, the name of the officer recovering
11 the property, the names of all claimants thereto, and any final disposition of the
12 property. The police department shall advertise the property pursuant to KRS
13 Chapter 424 for the information of the public as to the amount and disposition of
14 the property.

15 (3) If any property in the custody of the police department is desired as evidence in any
16 criminal court, such property shall be delivered to any officer who presents an order
17 to that effect from the court. Such property shall not be retained in the court but
18 shall be returned to the police department.

19 (4) All property except firearms that remains in the custody of the police department for
20 three (3) months, without any lawful claimant thereto, may be sold at public auction
21 in a suitable room designated for that purpose after having been advertised pursuant
22 to KRS Chapter 424. The proceeds of such sales shall be paid into the police and
23 firefighters' pension fund of said city or urban-county government if the city or
24 urban-county government has a pension fund with active members or beneficiaries.
25 If the city or urban-county government does not maintain a policemen's and
26 firefighters' pension fund or no longer has active members or beneficiaries, then the
27 proceeds shall be designated by the city or urban-county government for the

1 exclusive use of the police department. Firearms shall be *retained for official use*
2 *or destroyed in compliance with Section 1 of this Act*~~transferred to the~~
3 ~~Department of Kentucky State Police~~ within ninety (90) days of abandonment,
4 confiscation, release of the weapon as evidence, or forfeiture by a court, whichever
5 occurs later.

6 ➔Section 5. KRS 147A.002 is amended to read as follows:

7 (1) The Department for Local Government shall be headed by a commissioner and shall
8 consist of the:

9 (a) Office of Financial Management and Administration, which shall be headed
10 by an executive director appointed by the commissioner and shall be
11 responsible for duties including but not limited to local government financial
12 assistance; county budget approval; performance of various recordkeeping
13 requirements for the Commonwealth's cities, counties, and special districts;
14 provision of administrative support for the state local debt officer and the state
15 local finance officer; administration of the county officials training incentive
16 program set forth in KRS 64.5275; and provision of financial analysis and
17 guidance related to the internal budgetary processes of the Department for
18 Local Government;

19 (b) Office of Federal Grants, which shall be headed by an executive director
20 appointed by the commissioner and shall be responsible for the administration
21 of all federal grant programs;

22 (c) Office of State Grants, which shall be headed by an executive director
23 appointed by the commissioner and shall be responsible for the administration
24 of all state grant programs, including the Renaissance on Main Program, the
25 area development fund,~~the body armor program set forth in KRS 16.220,~~
26 the cemetery fund program, single county coal severance grants, and any state
27 grant programs or individually funded projects awarded by statute or budget;

1 (d) Office of Legal Services, which shall be headed by an executive director
2 appointed by the commissioner and shall be responsible for legal services
3 within the Department for Local Government and for its constituencies around
4 the Commonwealth; and

5 (e) Office of Field Services, which shall be headed by an executive director
6 appointed by the commissioner and shall be responsible for duties including
7 but not limited to staffing regional offices to assist local governments.

8 (2) The commissioner, with the approval of the Governor, shall appoint necessary
9 deputies, assistants, attorneys, and other employees and shall fix their compensation
10 and authorize payment of their expenses according to law.

11 ➔Section 6. KRS 244.190 is amended to read as follows:

12 Any peace officers, state administrators, and investigators of the department may, upon
13 probable cause, without warrant seize contraband regardless of whether it is in dry
14 territory or not, and hold it subject to the order of the court before which the owner or one
15 in possession of the contraband has been charged with violation of KRS Chapter 242 or
16 KRS 243.020. Upon conviction of the defendant, the court shall enter an order for the
17 destruction of all contraband property~~[, except firearms or ammunition,]~~ included in KRS
18 244.180(1), (2), (3), and (4).~~[Contraband firearms and ammunition shall be transferred to~~
19 ~~the Department of Kentucky State Police for disposition as provided in KRS 500.090.]~~

20 ➔Section 7. KRS 376.275 is amended to read as follows:

21 (1) When a motor vehicle has been involuntarily towed or transported pursuant to order
22 of police, other public authority, or private person or business for any reason or
23 when the vehicle has been stolen or misappropriated and its removal from the
24 public ways has been ordered by police, other public authority, or by private person
25 or business, or in any other situation where a motor vehicle has been involuntarily
26 towed or transported by order of police, other authority, or by private person or
27 business, the police, other authority, private person or business shall attempt to

1 ascertain from the Transportation Cabinet the identity of the registered owner of the
2 motor vehicle or lessor of a motor carrier as defined in KRS Chapter 281 and within
3 ten (10) business days of the removal shall, by certified mail, attempt to notify the
4 registered owner at the address of record of the make, model, license number and
5 vehicle identification number of the vehicle and of the location of the vehicle, and
6 the requirements for securing the release of said motor vehicle.

7 (2) If a vehicle described in subsection (1) of this section is placed in a garage or other
8 storage facility, the owner of the facility shall attempt to provide the notice provided
9 in subsection (1) of this section, by certified mail, to the registered owner at the
10 address of record of the motor vehicle or lessor of a motor carrier as defined in KRS
11 Chapter 281 within ten (10) business days of recovery of, or taking possession of
12 the motor vehicle. The notice shall contain the information as to the make, model,
13 license number and vehicle identification number of the vehicle, the location of the
14 vehicle and the amount of reasonable charges for towing, recovery, storage,
15 transporting, and other applicable charges due on the vehicle. When the owner of
16 the facility fails to provide notice as provided herein, the motor vehicle storage
17 facility shall forfeit all storage fees accrued after ten (10) business days from the
18 date of tow. This subsection shall not apply to a garage or storage facility owned or
19 operated by a government entity.

20 (3) (a) Any person engaged in the business of storing or towing motor vehicles, who
21 has substantially complied with the aforementioned requirements of this
22 section, shall have a lien on the motor vehicle and its contents, except as set
23 forth in subsection (4) of this section, for the reasonable or agreed charges for
24 towing, recovery, storage, transporting, and other applicable charges due on
25 the vehicle, as long as it remains in his possession.

26 (b) Prior to payment of fees and release of a vehicle, a towing or storage company
27 shall not refuse the right of physical inspection of the towed vehicle by the

1 owner or an insurance company representative. Release of the vehicle shall
2 occur to the owner or insurance company representative upon payment and
3 consent of the release from the owner or the owner's authorized representative.
4 Each additional service shall be set forth individually as a single line item in
5 the bill with an explanation and the exact charge for the service.

6 (c) If after a period of forty-five (45) days, the reasonable or agreed charges for
7 towing, recovery, storage, transporting, and other applicable charges due on a
8 motor vehicle and its contents have not been paid, the motor vehicle and its
9 contents, except as set forth in subsection (4) of this section, may be sold to
10 pay the charges after the owner has been notified by certified mail ten (10)
11 days prior to the time and place of the sale. If the proceeds of the sale of any
12 vehicle pursuant to this section are insufficient to satisfy accrued charges for
13 towing, transporting, and storage, the sale and collection of proceeds shall not
14 constitute a waiver or release of responsibility for payment of unpaid towing,
15 transporting, and storage charges by the owner or responsible casualty insurer
16 of the vehicle. A lien on a vehicle under this subsection shall be subject to
17 prior recorded liens.

18 (d) A lien holder having a prior recorded lien listed on the title issued by the
19 Commonwealth of Kentucky shall be notified by certified mail within the first
20 fifteen (15) days of impoundment. The letter shall include the make, model,
21 license number, vehicle identification number, owner's name and last known
22 address, and tentative date of sale for the vehicle. If the above-referenced
23 certified letter is not sent within the fifteen (15) days by the towing and
24 storage company, then only fifteen (15) days of storage may be charged. The
25 lien holder has the right to take possession of the motor vehicle after showing
26 proof of lien still enforced, and paying the reasonable or agreed towing and
27 storage charges on the motor vehicle. Nothing in this section shall allow the

1 transfer of a vehicle subject to a lien, except as provided in KRS 186A.190.

2 (4) Subsection (3) of this section shall not apply to the following contents of a motor
3 vehicle, which shall be released to the vehicle owner or the owner's designated
4 agent upon request, if the request is made within forty-five (45) days of the date the
5 vehicle was towed:

6 (a) Prescription medication in its proper container;

7 (b) Personal medical supplies and equipment or records;

8 (c) Educational materials, including but not limited to calculators, books, papers,
9 and school supplies;

10 (d) Documents, files, electronic devices, or equipment which may be able to store
11 personal information or information relating to a person's employment or
12 business;

13 (e) Firearms and ammunition. Notwithstanding the provisions of subsection (5) of
14 this section, firearms and ammunition which are not claimed by the owner of
15 the vehicle within forty-five (45) days of the date the vehicle was towed shall
16 be transferred to the Department of Kentucky State Police for disposition as
17 provided by Section 1 of this Act~~[KRS 16.220]~~;

18 (f) Cargo in the possession of persons engaged in transportation in interstate
19 commerce as registered under KRS 186.020;

20 (g) Cargo in the possession of an integrated intermodal small package carrier as
21 defined by KRS 281.605(12);

22 (h) Child restraint systems or child booster seats; and

23 (i) Checks, checkbooks, debit or credit cards, money orders, stocks, or bonds.

24 (5) Except as provided for in subsection (4)(e) of this section, any contents exempted
25 under subsection (4) of this section that are not claimed by the owner of the vehicle
26 within forty-five (45) days of the date the vehicle was towed may be sold or
27 otherwise legally disposed of by the storage or towing company.

1 (6) The storage or towing company shall not be responsible for contents in a vehicle's
2 trunk or other locked compartment to which the storage or towing company is
3 without access, unless the towing company intentionally opens the area without the
4 owner's consent.

5 (7) The provisions of this section shall not apply when a local government causes
6 a vehicle to be towed pursuant to KRS 82.605 to 82.640 or if state government causes a
7 vehicle to be towed.

8 ➔Section 8. The following KRS sections are repealed:

9 16.220 Public auction of confiscated firearms -- Disposition of proceeds -- Department
10 of Kentucky State Police treatment of transferred firearms.

11 500.093 Prohibition against court or law enforcement agency retaining firearms or
12 ammunition to prevent their transfer or sale.