

1 AN ACT relating to 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 transferred to the Department of Kentucky State Police for disposition as  
9           provided by KRS 16.220, except as provided in subsection (8) of this section.  
10          The transfer shall occur not more than ninety (90) days after the abandonment  
11          of the firearm or ammunition to the law enforcement agency or not more than  
12          ninety (90) days after its confiscation, unless a court requires the firearm or  
13          ammunition for use as evidence, in which case it shall be transferred to the  
14          Department of Kentucky State Police not more than ninety (90) days  
15          following the order of forfeiture by the court or after the court returns the  
16          firearm or ammunition from use as evidence. Prior to the sale of any firearm  
17          or ammunition, the law enforcement agency shall make a bona fide attempt to  
18          determine if the firearm or ammunition to be sold has been stolen or otherwise  
19          unlawfully obtained from an innocent owner and return the firearm and  
20          ammunition to its lawful innocent owner, unless that person is ineligible to  
21          purchase a firearm under federal law. This subsection relating to auction of  
22          firearms and ammunition shall not apply to firearms and ammunition  
23          auctioned by the Department of Fish and Wildlife that may be sold to  
24          individual purchasers residing in Kentucky who are eligible under federal law  
25          to purchase firearms and ammunition of the type auctioned.
- 26          (d) If property which is forfeited under any section of this code is determined by  
27          the trial court to be worthless, encumbered with liens in excess of its value, or

1 otherwise a burdensome asset, the court may abandon any interest in such  
2 property. Property which is abandoned pursuant to this section shall be  
3 returned to the lawful claimant upon payment of expenses for keeping the  
4 property.

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

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

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

22 (4) The trial court shall remit the forfeiture of property when the lawful claimant:

23 (a) Asserts his or her claim before disposition of the property pursuant to this  
24 section;

25 (b) Establishes his or her legal interest in the property; and

26 (c) Establishes that the unlawful use of the property was without his or her  
27 knowledge and consent. This subsection shall not apply to a lienholder of

1 record when the trial court elects to dispose of the property pursuant to  
2 subsection (1)(b) of this section.

3 (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.

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

21 (7) Before forfeiture of any property under this section, it shall be the duty of the trial  
22 court to determine if a lawful owner or claimant to the property has been identified  
23 or is identifiable. If a lawful owner or claimant has been identified or is identifiable,  
24 the court shall notify the owner or claimant that the property is being held and  
25 specify a reasonable period of time during which the claim may be made or may, in  
26 lieu thereof, order the return of the property to the lawful owner or claimant. If the  
27 lawful owner or claimant does not assert his or her claim to the property after

1 notification or if he or she renounces his or her claim to the property, the property  
2 shall be disposed of as provided in this section. It shall be the duty of all peace  
3 officers and other public officers or officials having knowledge of the lawful owner  
4 or claimant of property subject to forfeiture to report the same to the trial court  
5 before the act of forfeiture occurs.

6 (8) A law enforcement agency of a consolidated local government that receives  
7 custody of any firearm that is abandoned, confiscated, or forfeited under any  
8 section of the Kentucky Penal Code, KRS Chapters 500 to 534, may destroy the  
9 firearm in accordance with any guidelines set forth by the United States Bureau  
10 of Alcohol, Tobacco, Firearm and Explosives. KRS 65.870 shall not be  
11 interpreted or construed to contradict this subsection.