

1 AN ACT relating to confiscated firearms.

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

3 ➔Section 1. KRS 16.220 is amended to read as follows:

4 (1) **(a)** Subject to the duty to return confiscated firearms to innocent owners pursuant  
5 to KRS 500.090, **and paragraph (b) of this subsection,** all firearms  
6 confiscated by the Department of Kentucky State Police and not retained for  
7 official use pursuant to KRS 500.090 ~~may be~~ ~~shall be sold at public auction~~  
8 ~~to~~:

9 ~~1. (a)~~ **Sold at public auction to** federally licensed firearms dealers  
10 holding a license appropriate for the type of firearm sold; or

11 ~~2. (b)~~ **Destroyed.**

12 **(b) A firearm used in the commission of an offense that would classify a person**  
13 **as a violent offender under KRS 439.3401 shall be destroyed.** ~~For a firearm~~  
14 ~~which was used in a homicide, any person who certifies on a form provided~~  
15 ~~by the Department of Kentucky State Police prior to placing a bid that he or~~  
16 ~~she will, upon completion of the auction, leave the firearm with the~~  
17 ~~Department of Kentucky State Police for destruction. A state or local~~  
18 ~~government or agency thereof shall not purchase a firearm under this~~  
19 ~~paragraph].~~

20 (2) Any provision of KRS Chapter 45 or 45A relating to disposition of property to the  
21 contrary notwithstanding, the Department of Kentucky State Police shall:

22 (a) Conduct any auction specified by this section;

23 (b) Retain for departmental use twenty percent (20%) of the gross proceeds from  
24 any auction specified by this section;

25 (c) Transfer remaining proceeds of the sale to the account of the Kentucky Office  
26 of Homeland Security for use as provided in subsection (5) of this section;

27 and

- 1 (d) For any **disposition under subsection (1) of this section other than a sale at**  
2 **public auction**~~[sale pursuant to subsection (1)(b) of this section]~~, destroy the  
3 firearm.
- 4 (3) Prior to the **destruction or** sale of any firearm, the Department of Kentucky State  
5 Police shall make an attempt to determine if the firearm to be **destroyed or** sold has  
6 been stolen or otherwise unlawfully obtained from an innocent owner and return the  
7 firearm to its lawful innocent owner, unless that person is ineligible to purchase a  
8 firearm under federal law.
- 9 (4) The Department of Kentucky State Police shall receive firearms and ammunition  
10 confiscated by or abandoned to every law enforcement agency in Kentucky. The  
11 department shall dispose of the firearms received in the manner specified in  
12 subsections (1) and (2) of this section. However, firearms **that**~~[which]~~ are not  
13 retained for official use, returned to an innocent lawful owner, **destroyed**, or  
14 transferred to another government agency or public museum shall be sold as  
15 provided in subsection (1) of this section.
- 16 (5) The proceeds of firearms sales shall be utilized by the Kentucky Office of  
17 Homeland Security to provide grants to city, county, charter county, unified local  
18 government, urban-county government, and consolidated local government police  
19 departments; university safety and security departments organized pursuant to KRS  
20 164.950; school districts that employ special law enforcement officers as defined in  
21 KRS 61.900; and sheriff's departments for the purchase of:
- 22 (a) Body armor for sworn peace officers of those departments and service  
23 animals, as defined in KRS 525.010, of those departments;
- 24 (b) Firearms or ammunition;
- 25 (c) Electronic control devices, electronic control weapons, or electro-muscular  
26 disruption technology; and
- 27 (d) Body-worn cameras.

1 In awarding grants under this section, the Kentucky Office of Homeland Security  
2 shall give first priority to providing and replacing body armor and second priority to  
3 providing firearms and ammunition, with residual funds available for the purchase  
4 of body-worn cameras, electronic control devices, electronic control weapons, or  
5 electro-muscular disruption technology. Body armor purchased by the department  
6 receiving grant funds shall meet or exceed the standards issued by the National  
7 Institute of Justice for body armor. No police or sheriff's department shall apply for  
8 a grant to replace existing body armor unless that body armor has been in actual use  
9 for a period of five (5) years or longer. Any department applying for grant funds for  
10 body-worn cameras shall develop a policy for their use and shall submit that policy  
11 with its application for the grant funds to the Office of Homeland Security as part of  
12 the application process.

13 (6) The Department of Kentucky State Police may transfer a machine gun, short-  
14 barreled shotgun, short-barreled rifle, silencer, pistol with a shoulder stock, any  
15 other weapon, or destructive device as defined by the National Firearms Act, 26  
16 U.S.C. sec. 5801 et seq., which is subject to registration under the National  
17 Firearms Act and is not properly registered in the national firearms transfer records  
18 for those types of weapons, to the Bureau of Alcohol, Tobacco, ~~and~~ Firearms and  
19 Explosives of the United States Department of Justice, after a reasonable attempt  
20 has been made to transfer the firearm to an eligible state or local law enforcement  
21 agency or to an eligible museum and no eligible recipient will take the firearm or  
22 weapon. National Firearms Act firearms and weapons which are properly registered  
23 and not returned to an innocent lawful owner, destroyed, or retained for official use  
24 as provided in this section shall be sold in accordance with subsection (1) of this  
25 section.

26 ➔Section 2. KRS 500.090 is amended to read as follows:

27 (1) Except as provided in KRS 500.092, all property which is subject to forfeiture

1 under any section of the Kentucky Penal Code shall be disposed of in accordance  
2 with this section.

3 (a) Property other than firearms which is forfeited under any section of this code  
4 may, upon order of the trial court, be destroyed by the sheriff of the county in  
5 which the conviction was obtained.

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

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

26 (c) 1. Subject to the duty to return confiscated firearms and ammunition to  
27 innocent owners pursuant to this section, all firearms and ammunition

1           confiscated by a state or local law enforcement agency, all firearms  
2           ordered forfeited by a court, and all abandoned firearms and ammunition  
3           coming into the custody of a state or local law enforcement agency and  
4           not retained for official use shall be transferred to the Department of  
5           Kentucky State Police for disposition as provided by KRS 16.220.

6           2. The transfer shall occur not more than ninety (90) days after the  
7           abandonment of the firearm or ammunition to the law enforcement  
8           agency or not more than ninety (90) days after its confiscation, unless a  
9           court requires the firearm or ammunition for use as evidence, in which  
10          case it shall be transferred to the Department of Kentucky State Police  
11          not more than ninety (90) days following the order of forfeiture by the  
12          court or after the court returns the firearm or ammunition from use as  
13          evidence.

14          3. Prior to the destruction or sale of any firearm or ammunition, the law  
15          enforcement agency shall make a bona fide attempt to determine if the  
16          firearm or ammunition to be destroyed or sold has been stolen or  
17          otherwise unlawfully obtained from an innocent owner and return the  
18          firearm and ammunition to its lawful innocent owner, unless that person  
19          is ineligible to purchase a firearm under federal law.

20          4. This subsection relating to auction of firearms and ammunition shall not  
21          apply to firearms and ammunition auctioned by the Department of Fish  
22          and Wildlife that may be sold to individual purchasers residing in  
23          Kentucky who are eligible under federal law to purchase firearms and  
24          ammunition of the type auctioned.

25          (d) If property which is forfeited under any section of this code is determined by  
26          the trial court to be worthless, encumbered with liens in excess of its value, or  
27          otherwise a burdensome asset, the court may abandon any interest in such

1 property. Property which is abandoned pursuant to this section shall be  
2 returned to the lawful claimant upon payment of expenses for keeping the  
3 property.

4 (e) Property which is forfeited under any section of this code may, upon order of  
5 the trial court, be retained for official use in the following manner. Property  
6 which has been seized by an agency of the state may be retained for official  
7 state use. Property which has been seized by an agency of a county, city,  
8 **charter county government,**~~[or]~~ urban-county government, **consolidated local**  
9 **government, or unified local government** may be retained for official use by  
10 the government whose agency seized the property or for official state use.  
11 Property seized by any other unit of government may be retained only for  
12 official state use. The expenses for keeping and transferring such property  
13 shall be paid by the unit 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) (a) Before property which has had its identity obscured in violation of KRS  
5 514.120 may be sold or retained for official use as provided in this section, the  
6 court shall cause a serial or other identifying number to be placed thereon, and  
7 a record of the number assigned shall be placed in the court order authorizing  
8 the sale or retention of the property. This number shall be assigned, whenever  
9 applicable, in consultation with the Department of Kentucky State Police and  
10 any other state or federal regulatory agency.

11 (b) The purchaser of the property shall be given a document stating that the  
12 property had been forfeited pursuant to law and that a number, shown on the  
13 document, has been assigned which shall be deemed as compliance of the  
14 owner with KRS 514.120. When property is returned to an owner pursuant to  
15 this section and its identity has been obscured by another person in violation  
16 of KRS 514.120, the court shall provide a document to the owner relieving  
17 him or her of liability for its continued possession. This document shall serve  
18 as evidence of compliance with KRS 514.120 by the owner or any person to  
19 whom he or she lawfully disposes of the property.

20 (c) This section shall not apply to any person after property has been sold or  
21 returned in compliance with this section who violates the provisions of KRS  
22 514.120 with respect to that property.

23 (7) (a) Before forfeiture of any property under this section, it shall be the duty of the  
24 trial court to determine if a lawful owner or claimant to the property has been  
25 identified or is identifiable. If a lawful owner or claimant has been identified  
26 or is identifiable, the court shall notify the owner or claimant that the property  
27 is being held and specify a reasonable period of time during which the claim

1           may be made or may, in lieu thereof, order the return of the property to the  
2           lawful owner or claimant.

3           **(b)** If the lawful owner or claimant does not assert his or her claim to the property  
4           after notification or if he or she renounces his or her claim to the property, the  
5           property shall be disposed of as provided in this section.

6           **(c)** It shall be the duty of all peace officers and other public officers or officials  
7           having knowledge of the lawful owner or claimant of property subject to  
8           forfeiture to report the same to the trial court before the act of forfeiture  
9           occurs.

10          ➔Section 3. KRS 500.093 is amended to read as follows:

11       No court or law enforcement agency shall retain a firearm or ammunition for official use  
12       for the purpose of avoiding transfer of the firearm or ammunition to the Department of  
13       Kentucky State Police under KRS 237.090 or 500.090~~[,]~~ or other statute to avoid its  
14       being **destroyed or** sold pursuant to KRS 16.220.