

HOUSE BILL 1046

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 38, Chapter 6; Section 39-17-1317 and Section 40-33-211, relative to the disposition of firearms in state or local custody.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1317, is amended by deleting the section in its entirety and substituting instead the following:

(a) Subject to § 40-33-211 and notwithstanding the remaining provisions of title 40, chapter 33, all firearms that are forfeited or abandoned to or received by any law enforcement agency of the state or a political subdivision of the state, including the Tennessee wildlife resources agency, or are otherwise acquired and no longer needed by the state or a political subdivision of the state, shall be disposed of as provided in this section.

(b) Prior to the disposal of any firearm that has been forfeited or abandoned to the state or a political subdivision of the state, the agency with custody or possession of the firearm shall use best efforts to determine if the firearm has been lost by or stolen or otherwise unlawfully obtained from an innocent owner, and if so, shall return the firearm to the owner, if ascertainable, unless that person is ineligible to possess, receive, or purchase a firearm under state or federal law.

(c)

(1) Except as provided in subsection (b) or (d), the agency shall dispose of any firearms it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers, or manufacturers

under 18 U.S.C. § 921 et seq. who are authorized to receive such firearms under the terms of such license.

(2) The auctions required by this subsection (c) may occur online on a rolling basis or at live events, but in no event shall an auction occur less frequently than once every six (6) months during any time the agency has an inventory of saleable firearms.

(3) The agency shall retain only such proceeds as are necessary to cover the costs of administering this section, with any surplus to be transferred to the state general fund, or applicable local general fund if a local agency; provided, that an agency may be reimbursed for any firearms formerly in use by the agency that are sold under this section.

(4) Employees of the agency shall not be eligible to bid on the firearms at an auction conducted under this section, and except for the costs of administration authorized under subdivision (c)(3), neither the agency nor its employees may retain any proceeds from any sale required by this section, nor may the agency or its employees retain any firearm required to be sold under this section.

(d)

(1) Subsection (c) shall not apply to a firearm if:

(A) No bids from eligible recipients are received within six (6) months from when bidding opened on the item; or

(B) The chief of police, agency director, or designee of such official certifies the firearm is unsafe for use because of wear, damage, age, or modification.

(2) At the discretion of the chief of police, agency director, or designee of such official, firearms subject to subdivision (d)(1) shall be:

(A) Transferred to the Tennessee bureau of investigation forensic services division for training or experimental purposes;

(B) Transferred to a museum or historical society that displays such items to the public and is lawfully eligible to receive the item; or

(C) Destroyed.

(e) All agencies subject to this section shall keep records of the firearms acquired and disposed of pursuant to this section, as well as the proceeds of the sales and the disbursement of proceeds, and shall maintain these records for not less than ten (10) years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.

(f) Neither the state nor any political subdivision of the state, nor any of their officers, agents, and employees, shall be liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale of a firearm under subsection (c), unless the state or political subdivision acted with gross negligence or recklessness.

SECTION 2. Tennessee Code Annotated, Section 40-33-211, is amended by adding the following as a new subsection (i):

(i) Subject to the duty to return confiscated firearms and ammunition to innocent owners pursuant to § 39-17-1317(b) and this subsection (i), all firearms and ammunition confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms and ammunition coming into the custody of a state or local law enforcement agency and not retained for official use shall be disposed of as provided by § 39-17-1317. The disposition shall occur not more than six (6) months after the abandonment of the firearm or ammunition to the law enforcement agency or not more than six (6) months after its confiscation, unless a court requires the firearm or ammunition for use as evidence, in which case it shall be disposed of not more than six (6) months following the order of forfeiture by the court or after the court returns the

firearm or ammunition from use as evidence. Prior to the sale of any firearm or ammunition, the law enforcement agency shall make a bona fide attempt to determine if the firearm or ammunition to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm and ammunition to its lawful owner, unless that person is ineligible to possess, receive, or purchase a firearm under federal or state law.

SECTION 3. For purposes of promulgating rules or establishing policies or procedures, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2015, the public welfare requiring it.