

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 335

Short Title: Disposition of Firearms/Benefit Law Enforcement. (Public)

Sponsors: Representatives Russell; Baddour, Esposito, Gillespie, Hilton, Preston,
and Sexton.

Referred to: Judiciary III.

March 1, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE DISPOSITION OF A
FIREARM TO PROVIDE THAT UPON ORDER OF THE APPROPRIATE
COURT, A LAW ENFORCEMENT AGENCY MAY USE THE FIREARM, OR
MAY TRADE, EXCHANGE, OR SELL THE FIREARM TO A FEDERALLY
LICENSED FIREARMS DEALER AND USE THE SALE PROCEEDS FOR LAW
ENFORCEMENT PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S.15-11.1(b1) reads as rewritten:

"(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner

1 of the firearm, and the defendant is not otherwise ineligible to possess
2 such firearm.

3 (3) By ordering the firearm turned over to be destroyed by the sheriff of
4 the county in which the firearm was seized or by his duly authorized
5 agent. The sheriff shall maintain a record of the destruction of the
6 firearm.

7 (4) By ordering the firearm turned over to a law enforcement agency in
8 the county of trial for (i) the official use of the agency, or (ii) for sale
9 by the agency in accordance with due process of law by the agency.
10 The court may order this disposition of the firearm only upon the
11 written request by the head or chief of the law enforcement agency and
12 only if the firearm has a legible, unique identification number. If the
13 law enforcement agency sells the firearm, then the proceeds of the sale
14 shall be retained by the law enforcement agency and shall be used only
15 for law enforcement purposes. The receiving law enforcement agency
16 shall maintain a record and inventory of all firearms received pursuant
17 to this section.

18 This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of
19 firearms used only in connection with a violation of Article 22 of Chapter 113 of the
20 General Statutes or any local wildlife hunting ordinance."

21 **SECTION 2.** Article 2 of Chapter 15 of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial**
24 **evidence.**

25 (a) Definition. — For purposes of this section, the term "unclaimed firearm"
26 means a firearm that is found or received by a law enforcement agency and that remains
27 unclaimed by the person who may be entitled to it for a period of 180 days after receipt
28 and publication of notice by the custodial law enforcement agency as required by this
29 section. The term does not include a firearm that is seized and disposed of pursuant to
30 G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

31 (b) Published Notice of Unclaimed Firearm. — When a law enforcement agency
32 finds or receives a firearm, the agency shall publish at least one notice in a newspaper
33 published in the county in which the agency is located stating that the firearm is
34 unclaimed and is in the custody of the law enforcement agency. The notice shall further
35 state that the firearm may be sold or otherwise disposed of unless the firearm is claimed
36 within 180 days of the published notice. The notice shall require any person who claims
37 any interest in the firearm to make and establish the claim or interest not later than 30
38 days from the date of the publication of the notice. The notice shall contain a brief
39 description of the firearm and any other information that the chief or head of the law
40 enforcement agency may consider necessary or advisable to reasonably inform the
41 public about the firearm.

42 (c) If the firearm remains unclaimed or if satisfactory evidence of its ownership
43 is not presented to the law enforcement agency within a period of 180 days after the
44 publication of the notice, then the head or chief of a law enforcement agency may apply

1 to the appropriate district court for an order of disposition of the unclaimed firearm. The
2 application shall be written.

3 (d) Disposition of Firearm. — The judge, after hearing, may order the disposition
4 of the firearm in one of the following ways:

5 (1) By ordering the firearm turned over to be destroyed by the sheriff of
6 the county in which the firearm was seized or by the sheriff's duly
7 authorized agent. The sheriff shall maintain a record of the destruction
8 of the firearm.

9 (2) By ordering the firearm turned over to the law enforcement agency
10 applying for the disposition of the firearm for (i) the official use of the
11 agency, or (ii) for sale, trade, or exchange to a federally licensed
12 firearm dealer by the agency in accordance with due process of law.
13 The court may order this disposition of the firearm only if the firearm
14 has a legible, unique identification number.

15 (e) Disbursement of Proceeds of Sale. — If the law enforcement agency sells the
16 firearm, then the proceeds of the sale shall be retained by the law enforcement agency
17 and used for law enforcement purposes. The receiving law enforcement agency shall
18 maintain a record and inventory of all firearms received pursuant to this section."

19 **SECTION 3.** G.S. 14-269.1 reads as rewritten:

20 "**§ 14-269.1. Confiscation and disposition of deadly weapons.**

21 Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any
22 other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269,
23 the deadly weapon with reference to which the defendant shall have been convicted
24 shall be ordered confiscated and disposed of by the presiding judge at the trial in one of
25 the following ways in the discretion of the presiding judge.

26 (1) By ordering the weapon returned to its rightful owner, but only when
27 such owner is a person other than the defendant and has filed a petition
28 for the recovery of such weapon with the presiding judge at the time of
29 the defendant's conviction, and upon a finding by the presiding judge
30 that petitioner is entitled to possession of same and that he was
31 unlawfully deprived of the same without his consent.

32 (2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

33 (4) By ordering such weapon turned over to the sheriff of the county in
34 which the trial is held or his duly authorized agent to be destroyed. The
35 sheriff shall maintain a record of the destruction thereof.

36 ~~(4a) By ordering the weapon, if the weapon has a legible unique~~
37 ~~identification number, turned over to a law enforcement agency in the~~
38 ~~county of trial for the official use of such agency, but only upon the~~
39 ~~written request by the head or chief of such agency. The receiving law~~
40 ~~enforcement agency shall maintain a record and inventory of all such~~
41 ~~weapons received.~~

42 (4b) By ordering the firearm turned over to a law enforcement agency in
43 the county of trial for (i) the official use of the agency, or (ii) for sale
44 by the agency in accordance with due process of law by the agency.

1 The court may order this disposition of the firearm only upon the
2 written request by the head or chief of the law enforcement agency and
3 only if the firearm has a legible, unique identification number. If the
4 law enforcement agency sells the firearm, then the proceeds of the sale
5 shall be retained by the law enforcement agency and shall be used only
6 for law enforcement purposes. The receiving law enforcement agency
7 shall maintain a record and inventory of all firearms received pursuant
8 to this section.

9 (5) By ordering such weapon turned over to the North Carolina State
10 Bureau of Investigation's Crime Laboratory Weapons Reference
11 Library for official use by that agency. The State Bureau of
12 Investigation shall maintain a record and inventory of all such
13 weapons received.

14 (6) By ordering such weapons turned over to the North Carolina Justice
15 Academy for official use by that agency. The North Carolina Justice
16 Academy shall maintain a record and inventory of all such weapons
17 received."

18 **SECTION 4.** This act is effective when it becomes law.