

HB0252S02 compared with HB0252S01

~~{deleted text}~~ shows text that was in HB0252S01 but was deleted in HB0252S02.

Inserted text shows text that was not in HB0252S01 but was inserted into HB0252S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Brad M. Daw proposes the following substitute bill:

DISPOSAL OF FIREARMS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies and enacts provisions related to the disposal of firearms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires that the Department of Public Safety contract with a federally licensed firearms dealer to act as the state-approved dealer for the state;
- ▶ provides that when a governmental agency disposes of a confiscated or unclaimed firearm, the governmental agency shall:
 - sell the firearm ~~{at public auction}~~ to a federally licensed firearms dealer;
 - give the firearm to the state-approved dealer to sell in accordance with the provisions of this bill; or

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- transfer the firearm to the Bureau of Forensic Services for testing;
- ▶ addresses the allocation of proceeds from the sale of a confiscated or unclaimed firearm; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

24-3-103, as enacted by Laws of Utah 2013, Chapter 394

53-5c-201, as last amended by Laws of Utah 2015, Chapter 258

53-5c-202, as enacted by Laws of Utah 2013, Chapter 188

ENACTS:

24-3-103.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **24-3-103** is amended to read:

24-3-103. Property no longer needed as evidence -- Disposition of property.

(1) When the prosecuting attorney determines that property no longer needs to be held as evidence, the prosecuting attorney may:

(a) petition the court to apply any property that is money towards restitution, fines, fees, or monetary judgments owed by the owner of the property;

(b) petition the court for an order transferring ownership of any weapons to the seizing agency for [its] the agency's use and disposal [~~as the seizing agency determines~~] in accordance with applicable law, if the owner:

(i) is the person who committed the crime for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

(c) notify the agency that has possession of the property that the property may be:

(i) returned to the rightful owner, if the rightful owner may lawfully possess it; or

(ii) disposed of, if the property is contraband.

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(2) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.

(3) (a) Before the agency may release property to a person claiming ownership of the property, the person shall establish [~~to the agency pursuant to~~] in accordance with Subsection (3)(b) that the person:

- (i) is the rightful owner; and
- (ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection (3)(a) by providing to the agency:

- (i) identifying proof or documentation of ownership of the property; or
- (ii) a notarized statement, if proof or documentation is not available.

(4) (a) When property is returned to the owner, a receipt listing in detail the property returned shall be signed by the owner.

(b) The receipt shall be retained by the agency and a copy shall be provided to the owner.

(5) [~~H~~] (a) Except as provided in Subsection (5)(b), if the agency is unable to locate the rightful owner of the property or if the rightful owner is not entitled to lawfully possess the property, the agency may:

- ~~(a)~~ (i) apply the property to a public interest use;
- ~~(b)~~ (ii) sell the property at public auction and apply the proceeds of the sale to a public interest use; or
- ~~(c)~~ (iii) destroy the property if [~~it~~] the property is unfit for a public interest use or for sale.

(b) If the property described in Subsection (5)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.

(6) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of its jurisdiction:

- (a) permission to apply the property or the proceeds to public interest use; and
- (b) the designation and approval of the public interest use of the property or the proceeds.

Section 2. Section **24-3-103.5** is enacted to read:

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24-3-103.5. Disposition of firearms no longer needed as evidence.

(1) As used in this section:

(a) "Confiscated or unclaimed firearm" means a firearm that is subject to disposal by an agency under Section 24-3-103 or 53-5c-202.

(b) "Department" means the Department of Public Safety created in Section 53-1-103.

(c) "Federally licensed firearms dealer" means a person:

(i) licensed as a dealer under 18 U.S.C. Sec. 923; and

(ii) engaged in the business of selling firearms.

(d) "State-approved dealer" means the federally licensed firearms dealer that contracts with the department under Subsection (4).

(2) An agency shall dispose of a confiscated or unclaimed firearm by:

(a) selling or destroying the confiscated or unclaimed firearm in accordance with Subsection (3);

(b) giving the confiscated or unclaimed firearm to the state-approved dealer to sell or destroy in accordance with Subsection (4) and the agreement between the state-approved dealer and the department; or

(c) after the agency obtains approval from the legislative body of the agency's jurisdiction, transferring the confiscated or unclaimed firearm to the Bureau of Forensic Services, created in Section 53-10-401, for testing.

(3) (a) An agency that elects to dispose of a confiscated or unclaimed firearm under Subsection (2)(a) shall:

(i) sell the confiscated or unclaimed firearm ~~at public auction~~ to a federally licensed firearms dealer and apply the proceeds ~~of~~ from the sale to a public interest use; or

(ii) destroy the firearm, if the agency determines that:

(A) the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale ~~of~~ destroy the firearm; or

(B) the confiscated or unclaimed firearm is associated with a notorious crime.

(b) Before an agency applies the proceeds of a sale of a confiscated or unclaimed firearm to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:

(i) permission to apply the proceeds of the sale to a public interest use; and

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(ii) the designation and approval of the public interest use to which the agency applies the proceeds.

(4) (a) (i) The department shall, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a federally licensed firearms dealer to sell or destroy all confiscated or unclaimed firearms in the state.

(ii) The term of an agreement executed in accordance with this Subsection (4) may not exceed five years.

(iii) Nothing in this Subsection (4) prevents the department from contracting with the same federally licensed firearms dealer more than once.

(b) An agreement executed in accordance with Subsection (4)(a) shall:

(i) address the amount of money that the federally licensed firearms dealer is entitled to retain from the sale of each confiscated or unclaimed firearm as compensation for the federally licensed firearms dealer's performance under the agreement;

(ii) require the federally licensed firearms dealer to donate, on behalf of the state, all proceeds from the sale of a confiscated or unclaimed firearm, except the amount described in Subsection (4)(b)(i), to an organization that:

(A) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

(B) complies with any applicable licensing or registration requirements in the state;

(C) primarily helps the families of law enforcement officers in the state who die in the line of duty;

(D) gives financial assistance to the families of law enforcement officers in the state who die in the line of duty; and

(E) provides other assistance to children of active law enforcement officers, including scholarships;

(iii) state that if the federally licensed firearms dealer determines that the condition of a confiscated or unclaimed firearm makes the firearm unfit for sale, the federally licensed firearms dealer shall destroy the firearm; and

(iv) provide a procedure by which the department can ensure that the federally licensed firearms dealer complies with the provisions of the agreement and applicable law.

Section 3. Section **53-5c-201** is amended to read:

53-5c-201. Voluntary commitment of a firearm by owner cohabitant -- Law

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enforcement to hold firearm.

(1) (a) An owner cohabitant may voluntarily commit a firearm to a law enforcement agency for safekeeping if the owner cohabitant believes that another cohabitant is an immediate threat to:

- (i) himself or herself;
- (ii) the owner cohabitant; or
- (iii) any other person.

(b) A law enforcement agency may not hold a firearm under this section if the law enforcement agency obtains the firearm in a manner other than the owner cohabitant voluntarily presenting, of ~~[his or her]~~ the owner cohabitant's own free will, the firearm to the law enforcement agency at the agency's office.

(2) Unless a firearm is an illegal firearm subject to Section 53-5c-202, a law enforcement agency that receives a firearm in accordance with this chapter shall:

- (a) record:
 - (i) the owner cohabitant's name, address, and phone number;
 - (ii) the firearm serial number; and
 - (iii) the date that the firearm was voluntarily committed;
- (b) require the owner cohabitant to sign a document attesting that the owner cohabitant has an ownership interest in the firearm;
- (c) hold the firearm in safe custody for 60 days after the day on which ~~[it]~~ the firearm is voluntarily committed; and
- (d) upon proof of identification, return the firearm to:
 - (i) the owner cohabitant after the expiration of the 60-day period or, if the owner cohabitant requests return of the firearm before the expiration of the 60-day period, at the time of the request; or
 - (ii) ~~[to]~~ an owner other than the owner cohabitant in accordance with Section 53-5c-202.

(3) The law enforcement agency shall hold the firearm for an additional 60 days:

- (a) if the initial 60-day period expires; and
- (b) the owner cohabitant requests that the law enforcement agency hold the firearm for an additional 60 days.

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(4) A law enforcement agency may not request or require that the owner cohabitant provide the name or other information of the cohabitant who poses an immediate threat or any other cohabitant.

(5) Notwithstanding an ordinance or policy to the contrary adopted in accordance with Section 63G-2-701, a law enforcement agency shall destroy a record created under Subsection (2), Subsection 53-5c-202(4)(b)(iii), or any other record created in the application of this chapter no later than five days after:

(a) returning a firearm in accordance with Subsection (2)(d); or

(b) [~~appropriating, selling, or destroying~~] disposing of the firearm in accordance with Section 53-5c-202.

(6) Unless otherwise provided, the provisions of Title 77, Chapter 24a, Lost or Mislaid Personal Property, do not apply to a firearm received by a law enforcement agency in accordance with this chapter.

(7) A law enforcement agency shall adopt a policy for the safekeeping of a firearm held in accordance with this chapter.

Section 4. Section **53-5c-202** is amended to read:

53-5c-202. Illegal firearms confiscated -- Disposition of unclaimed firearm.

(1) If a law enforcement agency receives a firearm in accordance with Section 53-5c-201, and the firearm is an illegal firearm, the law enforcement agency shall:

(a) notify the owner cohabitant attempting to voluntarily commit the firearm that the firearm is an illegal firearm; and

(b) confiscate the firearm and dispose of [~~it as the head of the law enforcement agency determines~~] the firearm in accordance with Section 24-3-103.5.

(2) (a) If a law enforcement agency cannot, after a reasonable attempt, locate an owner cohabitant to return a firearm in accordance with Section 53-5c-201, the law enforcement agency [~~may~~] shall dispose of the firearm in accordance with Section 24-3-103.5.

~~[(i) appropriate the firearm to public interest use as provided in Subsection (3);]~~

~~[(ii) sell the firearm at public auction as provided by law and appropriate the proceeds of the sale to public interest use; or]~~

~~[(iii) destroy the firearm if unfit for sale.]~~

(b) A law enforcement agency [~~may take an action in accordance with~~] may not

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dispose of a firearm under Subsection (2)(a) [~~no earlier than~~] before one year after the day on which the owner cohabitant initially voluntarily commits the firearm in accordance with Section 53-5c-201.

~~[(3) Before appropriating the firearm to public interest use, the law enforcement agency, having possession of the firearm, shall obtain from the legislative body of its jurisdiction:]~~

~~[(a) permission to appropriate the firearm to public interest use; and]~~

~~[(b) the designation and approval of the public interest use of the firearm.]~~

~~[(4)]~~ (3) (a) If a person other than an owner cohabitant who voluntarily commits a firearm in accordance with Section 53-5c-201 claims ownership of the firearm, the person may:

(i) request that the law enforcement agency return the firearm in accordance with Subsection ~~[(4)]~~ (3)(b); or

(ii) petition the court for the firearm's return in accordance with Subsection ~~[(4)]~~ (3)(c).

(b) Except as provided in Section 53-5c-201, the law enforcement agency shall return a firearm to a person other than an owner cohabitant who claims ownership of the firearm if:

(i) the 60-day period described in Section 53-5c-201 has expired;

(ii) the person provides identification; and

(iii) the person signs a document attesting that the person has an ownership interest in the firearm.

(c) After sufficient notice is given to the prosecutor, the court may order that the firearm be:

(i) returned to the rightful owner as determined by the court; or

~~[(ii) converted to public interest use; or]~~

~~[(iii) destroyed.]~~

(ii) disposed of in accordance with Section 24-3-103.5.

(d) A law enforcement agency shall return a firearm ordered returned to the rightful owner as expeditiously as possible after a court determination.

Section 5. **Effective date.**

This bill takes effect on January 1, 2018.