WEST VIRGINIA CODE CHAPTER 36 ARTICLE 8A

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§36-8A-1. Definitions.

For purposes of this article, unless a different meaning clearly appears in the context:

(a) "Chief executive" means the Superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; or the chief of any West Virginia municipal law-enforcement agency.

(b) "Item" means any item of unclaimed stolen property or any group of similar items considered together for purposes of reporting, donation, sale or destruction under this article.

(c) "Law-enforcement agency" means any duly authorized state, county or municipal organization of the State of West Virginia employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy Regional Recreation Authority nor any state institution of higher education is a law-enforcement agency.

(d) "Nonprofit organization" means: (i) Any nonprofit charitable organization; or (ii) any agency of the State of West Virginia the purpose of which is to provide health, recreational or educational services to citizens of the State of West Virginia.

(e) "Stolen property" means any tangible personal property, including cash and coins, which is confiscated by or otherwise comes into the custody of a law-enforcement agency during the course of a criminal investigation or the performance of any other authorized law-enforcement activity, whether or not the property was or can be proven to have been stolen.

(f) "Treasurer" means the State Treasurer or his or her authorized designee for purposes of the administration of this article.

(g) "Unclaimed stolen property" is stolen property:

(1) Which has been held by a law-enforcement agency for at least six months, during which time the rightful owner has not claimed it;

(2) For which the chief executive determines that there is no reasonable likelihood of its being returned to its rightful owner; and

(3) Which the chief executive determines to have no evidentiary value.

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§36-8A-2. Unclaimed stolen property reports.

(a) On or before September 1, of each year, each law-enforcement agency which has unclaimed stolen property in its possession shall file an unclaimed stolen property report with the Treasurer which identifies all unclaimed stolen property in its possession at the time the report is filed.

(b) An unclaimed stolen property report shall include the following information with respect to all unclaimed stolen property in the possession of the law-enforcement agency filing it:

(1) A description of each item, including a serial number, if applicable;

(2) An estimated value for each item;

(3) Whether any nonprofit organization has requested that any item be donated to it and whether any nonprofit organization might be considered to receive the item as a donation;

(4) Whether the law-enforcement agency could use the item for any legitimate and authorized law enforcement or educational purpose;

(5) The chief executive's recommendation for the disposition of each item; and

(6) If any unclaimed stolen property in the law-enforcement agency's possession consists of firearms or ammunition, a description of the best efforts used by the chief executive to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner prior to its disposition by public auction or as otherwise required by section five of this article.

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§36-8A-3. Treasurer's response to unclaimed stolen property report.

Within thirty days of the receipt of an unclaimed stolen property report, the Treasurer shall send a response to the law-enforcement agency submitting it. For each item identified in the unclaimed stolen property report, the Treasurer shall either require that it be delivered to the Treasurer, authorize the law-enforcement agency to sell it at a public sale, authorize the law-enforcement agency to donate it to a nonprofit organization, authorize the law-enforcement agency to use it for any legitimate and authorized law enforcement or educational purpose, or authorize the law-enforcement agency either to sell it at a public sale, to donate it to a nonprofit organization, or to use it for any legitimate and authorized law enforcement or educational purpose. However, the Treasurer may not authorize the law-enforcement agency to donate any firearms or ammunition. The sale of any firearms or ammunition by the law enforcement agency must be at a public sale to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license. If the Treasurer determines that any item identified in an unclaimed stolen property report is of such value that it should be processed by the Treasurer's office, the Treasurer shall have the authority to require that the item be delivered to the Treasurer.

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§36-8A-4. Disposition of unclaimed stolen property other than firearms and ammunition.

(a) Within ninety days of receipt of the treasurer's response required by section three of this article, the law-enforcement agency shall dispose of all items identified in the treasurer's response in the manner set forth in this section.

(b) If the treasurer's report requires the law-enforcement agency to deliver any item to the treasurer, the chief executive shall cause the item to be so delivered. Within three years after receiving the item from the law-enforcement agency, the treasurer shall sell it to the highest bidder at public sale at a location in the state which in the judgment of the treasurer affords the most favorable market for the property. The treasurer may decline the highest bid and reoffer the property for sale if the treasurer considers the bid to be insufficient. The treasurer need not offer the property for sale if the treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this subsection must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(c) If the treasurer's response authorizes the law-enforcement agency to sell any item at a public sale, the chief executive shall retain an auctioneer licensed by the State of West Virginia to conduct the sale. The costs or fees incurred will be paid from a fund generated from revenues gained by the sale of such property. The licensed auctioneer shall sell the item to the highest bidder at a location which in the judgment of the chief executive affords the most favorable market for the items. A sale under this subsection must be preceded by a single publication of notice, at least three weeks before the sale, in a newspaper of general circulation in the county in which the property is to be sold. The chief executive shall retain the proceeds of any public sale under this subsection for the use of the law-enforcement agency.

(d) If the treasurer's response authorizes the law-enforcement agency to donate any item to a nonprofit organization, the chief executive shall cause the item to be so donated.

(e) If the treasurer's report authorizes the law-enforcement agency to use any item for any legitimate and authorized law-enforcement or educational purpose, the chief executive shall cause the item to be used for that purpose. However, if the law-enforcement agency ever discontinues its use of the item, it must again report the item to the treasurer as provided in section two of this article.

(f) If the treasurer's response authorizes the law-enforcement agency either to sell any item at a public sale, to donate it to a nonprofit organization or to use it for any legitimate and authorized law-enforcement or educational purpose, the chief executive may cause the item either to be sold, donated or used as provided in this section. However, the chief executive shall first attempt to donate the item as provided in subsection (d) of this section or to use it as provided in subsection (e) of this section before selling it at a public sale as provided in subsection (c) of this section.

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§36-8A-5. Regarding the disposition of firearms in state custody.

(a) Except as provided in section three of this article, subject to the duty to return firearms to innocent owners pursuant to subsection (b) of this section, all firearms, as defined in section two, article seven, chapter sixty-one of this code, that are forfeited or abandoned to any law-enforcement agency of this state or a political subdivision of this state, including the West Virginia Division of Natural Resources, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be transferred to the State Treasurer for disposal as provided in this section.

(b) Except as provided in section three of this article, within thirty days of the receipt of an unclaimed stolen property report, the State Treasurer shall coordinate best efforts with the reporting law-enforcement agency to transfer the firearms and ammunition to the State Treasurer for disposal as provided in subsection (e).

(c) Prior to the disposal of any firearm that has been forfeited or abandoned to the state, the chief executive of each law-enforcement agency shall use best efforts to determine if the firearm has been lost by, stolen or otherwise unlawfully obtained from an innocent owner, and if so, shall return the firearm to its innocent owner, if ascertainable, unless that person is ineligible to receive or possess a firearm under state or federal law.

(d) Upon determination and verification that a lawful owner is unavailable or ineligible to receive or possess a firearm under state or federal law, reporting enforcement agencies may trade the firearms and ammunition to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license, in exchange for new weapons or ammunition, or appropriate the firearms and ammunition for law-enforcement agency use.

(e) Except as provided in subsections (c),(d) and (f) of this section, the State Treasurer shall dispose of the firearms that it receives under subsection (a) by sale at public auction to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq. and authorized to receive firearms under the terms of their license.

(1) The auctions required by this subsection may occur online on a rolling basis or at live events but in no event may occur less frequently than once every six months.

(2) The State Treasurer shall retain only the net proceeds necessary to cover the costs of administering this section, with any surplus to be transferred to the general fund of the state: Provided, That an agency may be reimbursed for any decommissioned firearms formerly in use by the agency that are sold under this section: Provided, however, That an agency may apply to the State Treasurer for payment of the net proceeds generated by the sale of any property by the State Treasurer pursuant to this section.

(3) Employees of the State Police or of the agency from which the firearms are received are

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not eligible to bid on the firearms at an auction conducted under this section.

(f) The requirements of subsection (d) do not apply to a firearm that the chief executive of the law-enforcement agency or his or her designee certifies is unsafe for use because of wear, damage, age or modification, and any such firearm shall at the discretion of the superintendent be transferred to the State Police forensic laboratory for training or experimental purposes or to a museum or historical society or be destroyed.

(g) The State Treasurer shall keep records of all firearms acquired and disposed of under the provisions of this section, as well as the net proceeds of the sales and the disbursement of such proceeds, and shall maintain these records for not less than ten 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.

(h) Any firearm or ammunition subject to forfeiture proceedings which is ordered returned to any law enforcement agency for the purposes of public sale or auction may only be sold or transferred to persons licensed as firearms collectors, dealers, importers or manufacturers under the provisions of 18 U. S. C. §§921 et seq.

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§36-8A-6. Deposit of funds.

(a) The treasurer shall promptly deposit in the General Revenue Fund of this state all proceeds of any public sale of unclaimed stolen property conducted by the treasurer under subsection (b), section four of this article.

(b) Before making a deposit to the credit of the General Revenue Fund, the treasurer may deduct the expenses of the related public sale conducted by the treasurer.

(c) The treasurer may deduct the accumulated expenses incurred in the destruction of unclaimed stolen firearms and ammunition under this article from any deposit made under subsection (a) of this section.

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§36-8A-7. Immunity of law-enforcement agencies.

If a law-enforcement agency delivers, sells or donates any item of unclaimed stolen property in good faith and in accordance with the provisions of this article, the law-enforcement agency and its chief executive, officers and employees involved in the delivery, sale or donation shall be immune from any subsequent claim of a person who purports to be the true owner of the item and who did not claim the item prior to the delivery, sale or donation.

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§36-8A-8. State Treasurer's security personnel authority to carry concealed weapons.

(a) The State Treasurer may allow, consistent with the provisions of this section, security personnel to carry a concealed firearm while performing his or her official duties.

(b) Security personnel employed by the State Treasurer may carry a concealed firearm approved by the State Treasurer solely for purposes of defense of self or others if the individual has:

(1) Obtained the written authorization by the State Treasurer;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law;

(3) Obtained and maintains a concealed handgun license pursuant to §61-7-1 *et seq*. of this code; and

(4) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy pursuant to §30-29-1 *et seq*. of this code. The individual must thereafter successfully complete an annual firearms qualification equivalent to that required of certified law-enforcement officers pursuant to §30-29-1 *et seq*. of this code. The State Treasurer may reimburse security personnel for the cost of the training and requalification.

(c) Neither the state, a political subdivision, an agency nor an employee of the state acting in an official capacity, may be held personally liable for an act of security personnel employed by the State Treasurer if the act or omission was done in good faith while the individual was performing official duties or responsibilities under the office of the State Treasurer.

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