Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1457

Introduced by

Representatives Karls, Brabandt, B. Koppelman, K. Koppelman, Porter

Senators Armstrong, Cook

A BILL for an Act to amend and reenact section 62.1-01-02 of the North Dakota Century Code, relating to the forfeiture and disposition of firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime.

1. Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited ~~firearm or~~ dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or ~~authorized firearm~~ dealers, retained for use, or destroyed.
2. Notwithstanding any other provision of law; and subject to the duty to return firearms to innocent owners under this section, section 29-31.1-02, and as provided in chapter 29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement agency of this state or a political subdivision of this state, including the game and fish department, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be disposed of as provided in this section. Except as provided in chapter 29-01 for stolen property, this section does not apply to firearms that are seized or confiscated and disposed of under chapter 20.1-10.

3. a. Before the disposal of any firearm under this section, the agency with custody of the firearm shall use its 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 provide notification to the innocent owner of its custody of the firearm. An innocent owner may also notify the agency to claim a firearm.

b. After notification, the agency shall return the firearm to its innocent owner provided the owner submits sufficient proof of ownership, as determined by the agency, and pays the costs, if any, of returning the firearm to the innocent owner. Costs are limited to the actual costs of shipping to the innocent owner and associated costs from any transfer and background check fees charged when delivering the firearm to the innocent owner.

c. If six months elapse after notification to the innocent owner of the custody of the firearm by an agency and the innocent owner fails to bear the costs of return of his or her firearm or fails to respond to the agency notification, or if six months elapse after notice of a claim by an innocent owner and the innocent owner fails to bear the costs of return of the innocent owner's firearm or take away the innocent owner's firearm, then the agency shall dispose of the firearm ~~by sale at public auction~~ as provided in this section.

4. a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency shall dispose of the firearms that it receives under subsection 2 by sale at public auction to persons that may lawfully possess a firearm and persons licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the terms of the licenses.

b. The auction required by this subsection may occur online on a rolling basis or at live events, but in no event may the auction occur less frequently than once every ~~six months~~year during any time the agency has an inventory of saleable firearms. The agency ~~may~~shall establish a procedure to notify persons of its auctions.

c. The agency may not retain proceeds above that which ~~as~~ are necessary to cover the costs of administering this subsection, with any surplus to be transferred to the general fund of the jurisdiction in which the agency is located, provided that

an agency may be reimbursed for any firearms formerly in use by the agency that are sold under this section.

d. Employees of the agency are not ~~be~~ eligible to bid on the firearms at an auction conducted under this subsection, and except for the amounts authorized under subdivision c of this subsection, neither the agency nor its employees may retain any proceeds from any sale required by this subsection, nor may the agency or its employees retain any firearm required to be sold under this subsection.

5. The requirements of subsection 4 do not apply to a firearm if there are not any bids from eligible persons received within six months from when bidding opened on the firearm, or if the agency director, sheriff, chief of police, or a designee of the official certifies that the firearm is unsafe for use because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of the firearm. The agency director, sheriff, chief of police, or a designee of the official, may transfer any of these firearms to the attorney general's crime laboratory for training or experimental purposes, or to a museum or historical society that displays these items to the public and is lawfully eligible to receive the firearm, or the firearm may be destroyed. The requirements of subsection 4 do not apply to a firearm and an agency director, sheriff, chief of police, or a designee of the official may destroy the firearm, if the firearm was used in a violent crime resulting in the death of an individual, there is not a claim for the firearm by an innocent owner, and a family member of the deceased individual makes a written request for the destruction of the firearm. Agencies subject to the provisions of this section may establish a procedure to destroy firearms and may expend necessary funds for that purpose.

6. All agencies subject to the provisions of this section shall keep records of the firearms acquired and disposed of as provided in this section, as well as the proceeds of the sales and the disbursement of the 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.

7. Neither the state nor any political subdivision of the state, nor any of their officers, agents, and employees, is liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale or disposal of a

firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of the state or political subdivision acted with gross negligence or recklessness.

8. As used in this section, the term "innocent owner" means a person who:

a. Did not beforehand know or in the exercise of ordinary care would not have known of the conduct which caused that person's firearm to be forfeited, seized, or abandoned to any law enforcement agency of the state or any political subdivision of the state, including the game and fish department;

b. Did not participate in the commission of a crime or delinquent act involving that person's firearm;

c. Legally owned and presently owns the firearm forfeited, seized, or abandoned; and

d. Is authorized by state and federal law to receive and possess his or her firearm.

SECTION 2. APPLICATION. Any firearm held by an agency on August 1, 2015, is subject to the disposal and sale provisions of this Act.