

1 HB445
2 127972-1
3 By Representatives Galliher, Hill, Morrow, Ball, McClurkin,
4 Hurst, Johnson (R), Vance, Boothe, Chesteen, Williams (P),
5 Brown, Thomas, Oden, Merrill, Poole, Bridges, Laird, McClendon
6 and Davis
7 RFD: Public Safety and Homeland Security
8 First Read: 05-APR-11

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SYNOPSIS: Under existing law, a law enforcement officer is required to seize pistols used in certain crimes, as well as firearms used in the commission of certain crimes related to controlled substances.

Also under existing law, seized pistols are to be destroyed unless a judge determines that the pistols may be used solely by law enforcement, and seized firearms related to controlled-substance crimes may be retained by law enforcement for official use or sold if the firearm is not required to be destroyed by law.

This bill would require the seizure and forfeiture any firearm possessed, used, or sold in violation of law.

This bill would allow the seized firearm to be retained for use by the law enforcement agency seizing the firearm or to be sold at a public auction with proceeds being deposited into the

1 general fund of the state, county, or municipality
2 confiscating the firearm.

3 This bill would provide for the destruction
4 or recycling of a firearm if a court determines
5 that the firearm is inoperable or unsafe.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 13A-11-84, Code of Alabama 1975, to
12 delete seizure and disposition provisions relating solely to
13 pistols; to provide for the seizure and forfeiture of all
14 firearms possessed, used, or sold in violation of law; to
15 allow the firearms to be retained for use by the law
16 enforcement agency seizing the firearms or to be sold at an
17 auction; to provide for the disposition of funds collected
18 from a public auction of seized and forfeited firearms; to
19 provide for the destruction or recycling of inoperable or
20 unsafe firearms, and to provide for exceptions.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Section 13A-11-84, Code of Alabama 1975,
23 is amended to read as follows:

24 "§13A-11-84.

25 "~~(a)~~ Every violation of subsection (a) of Section
26 13A-11-72 or of Sections 13A-11-81 or 13A-11-82 shall be
27 punishable by imprisonment for not more than five years. Every

1 violation of subsection (b) of Section 13A-11-72 or of
2 Sections 13A-11-73, 13A-11-74 and 13A-11-77 through 13A-11-80
3 shall be punishable by imprisonment for any term less than one
4 year or by a fine of not more than \$500.00, or both. The
5 punishment for violating Section 13A-11-78 or 13A-11-79 may
6 include revocation of license.

7 ~~"(b) It shall be the duty of any sheriff, policeman~~
8 ~~or other peace officer of the State of Alabama, arresting any~~
9 ~~person charged with violating Sections 13A-11-71 through~~
10 ~~13A-11-73, or any one or more of said sections, to seize the~~
11 ~~pistol or pistols in the possession or under the control of~~
12 ~~the person or persons charged with violating said section or~~
13 ~~sections, and to deliver said pistol or pistols to one of the~~
14 ~~following named persons: if a municipal officer makes the~~
15 ~~arrest, to the city clerk or custodian of stolen property of~~
16 ~~the municipality employing the arresting officer; if a county,~~
17 ~~state or other peace officer makes the arrest, to the sheriff~~
18 ~~of the county in which the arrest is made. The person~~
19 ~~receiving the pistol or pistols from the arresting officer~~
20 ~~shall keep it in a safe place in as good condition as received~~
21 ~~until disposed of as hereinafter provided. Within five days~~
22 ~~after the final conviction of any person arrested for~~
23 ~~violating any of the above-numbered sections, the person~~
24 ~~receiving possession of the pistol or pistols, seized as~~
25 ~~aforesaid, shall report the seizure and detention of said~~
26 ~~pistol or pistols to the district attorney within the county~~
27 ~~where the pistol or pistols are seized, giving a full~~

1 ~~description thereof, the number, make and model thereof, the~~
2 ~~name of the person in whose possession it was found when~~
3 ~~seized, the person making claim to same or any interest~~
4 ~~therein, if the name can be ascertained or is known, and the~~
5 ~~date of the seizure. Upon receipt of the report from the~~
6 ~~person receiving possession of the pistol or pistols as~~
7 ~~aforsaid, it shall be the duty of the district attorney~~
8 ~~within the county wherein the pistol or pistols were seized to~~
9 ~~forthwith file a complaint in the circuit court of the proper~~
10 ~~county, praying that such seized pistol or pistols be declared~~
11 ~~contraband, be forfeited to the state and be destroyed. Any~~
12 ~~person, firm or corporation or association of persons in whose~~
13 ~~possession said pistol or pistols may be seized or who claim~~
14 ~~to own the same or any interest therein shall be made a party~~
15 ~~defendant to said complaint, and thereupon such matter shall~~
16 ~~proceed and be determined in the circuit court of the proper~~
17 ~~county in the same form and manner, as near as may be, as in~~
18 ~~the forfeiture and destruction of gaming devices, except as~~
19 ~~herein otherwise provided. When any judgment of condemnation~~
20 ~~and forfeiture is made in any case filed under the provisions~~
21 ~~of this section, the judge making such judgment shall direct~~
22 ~~therein the destruction of the pistol or pistols by the person~~
23 ~~receiving possession of said pistol or pistols from the~~
24 ~~arresting officer in the presence of the clerk or register of~~
25 ~~the court, unless the judge is of the opinion that the~~
26 ~~nondestruction thereof is necessary or proper in the ends of~~
27 ~~justice, in which event and upon recommendation of the~~

1 ~~district attorney, the judge shall award the pistol or pistols~~
2 ~~to the sheriff of the county or to the chief of police of the~~
3 ~~municipality to be used exclusively by the sheriff or the~~
4 ~~chief of police in the enforcement of law, and the sheriff of~~
5 ~~the county and the chiefs of police of the municipalities~~
6 ~~shall keep a permanent record of all pistols awarded to them~~
7 ~~as provided for herein, to be accounted for as other public~~
8 ~~property, and said order, in the event that no appeal is taken~~
9 ~~within 15 days from the rendition thereof, shall be carried~~
10 ~~out and executed before the expiration of 20 days from the~~
11 ~~date of the judgment. The court, at its discretion, shall~~
12 ~~direct in said judgment that the costs of the proceedings be~~
13 ~~paid by the person in whose possession said pistol or pistols~~
14 ~~were found when seized, or by any party or parties who claim~~
15 ~~to own said pistol or pistols, or any interest therein, and~~
16 ~~who contested the condemnation and forfeiture thereof."~~

17 Section 2. (a) Notwithstanding any other provision
18 of law, any firearm that is possessed, used, or sold in
19 violation of the law shall be seized by a state, county, or
20 municipal law enforcement agency and declared to be contraband
21 by any court having jurisdiction over the firearm. The state,
22 county, or municipal law enforcement agency may petition the
23 court for permission to dispose of the firearm in accordance
24 with this act.

25 (b) Any firearm seized and declared to be contraband
26 shall be sold in a public sale or used for legitimate law

1 enforcement purposes, at the discretion of the court, by
2 written order.

3 (c) If the court orders a firearm to be sold:

4 (1) It shall be sold at a public auction not later
5 than six months from the date of the court order. The sale
6 shall be conducted by the sheriff of the county or the chief
7 of police of the municipality in which it was seized.

8 (2) The proceeds from the sale shall go into the
9 state, county, or municipal general fund and shall be
10 allocated solely for law enforcement purposes.

11 (3) The public auction shall be advertised in a
12 daily or weekly newspaper circulated within the county. The
13 advertisement shall run for not less than three editions and
14 not less than 30 days prior to the sale.

15 (4) If required by federal or state law, the public
16 auction shall be conducted under contract with a licensed
17 firearm dealer, whose commission shall not exceed 20 percent
18 of the gross sales price. The dealer shall not hold an
19 elective or appointed job with the federal, state, county, or
20 city government in this state during any stage of the sales
21 contract.

22 (d) If the court orders a firearm to be retained and
23 used for legitimate law enforcement purposes:

24 (1) Title to the firearm shall be placed in the law
25 enforcement agency retaining the firearm.

1 (2) When the firearm is no longer needed for
2 legitimate law enforcement purposes, it shall be sold in
3 accordance with this act.

4 (e) Notwithstanding any other provision of this act,
5 no firearm shall be sold or retained for law enforcement use
6 in any of the following circumstances:

7 (1) A firearm that may be evidence in an official
8 proceeding shall be retained or otherwise preserved in
9 accordance with the rules or practices regulating the
10 preservation of evidence. The firearm shall be sold or
11 retained for legitimate law enforcement purposes not less than
12 60 days nor more than 180 days after the last legal proceeding
13 in which the firearm is necessary for evidence.

14 (2) A firearm that has been stolen or borrowed from
15 its owner, and the owner was not involved in the offense for
16 which the firearm was seized, shall be returned to the owner
17 if permitted by law.

18 (f) No firearm seized by a law enforcement agency
19 shall be used for any personal or law enforcement purposes or
20 sold except in accordance with this act.

21 (g) Notwithstanding the provisions of this act, if a
22 law enforcement agency seizes a firearm and certifies to the
23 court that the firearm is inoperable or unsafe, the court
24 shall order the firearm destroyed or recycled.

25 (h) Nothing in this act shall authorize the purchase
26 of any firearm, the possession of which is otherwise
27 prohibited by law.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.