

House Proposal of Amendment

S. 55

An act relating to the disposition of unlawful and abandoned firearms.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 2301 is amended to read:

§ 2301. APPLICABILITY OF CHAPTER

Notwithstanding any other provisions of law relating to the retention and disposition of evidence or lost, unclaimed, or abandoned property, the provisions of this chapter shall govern the retention or disposition, or both, of unlawful firearms, ~~as defined in section 2302 of this title,~~ in the possession of any agency, ~~as defined in section 2302 and the disposition of abandoned firearms in the possession of the Department of Public Safety.~~

Sec. 2. 20 V.S.A. § 2302 is amended to read:

§ 2302. UNLAWFUL FIREARMS; AGENCY

~~(a) For purposes of As used in this chapter;~~

(1) ~~“unlawful~~ Unlawful firearms” means firearms the possession of which constitutes a violation of federal or ~~state~~ State law and firearms carried or used in violation of any federal or ~~state~~ State law or in the commission of any federal or ~~state~~ State felony.

~~(b)(2) For purposes of this chapter,~~ “Agency” means any ~~state~~ State or local law enforcement agency, any ~~state~~ State agency except the ~~Vermont fish and wildlife department~~ Department of Fish and Wildlife, and any local government entity.

(3) “Unlawful per se” means firearms the possession of which is unlawful under any circumstances under State or federal law.

(4) “Abandoned firearms” means firearms in the possession of the Department of Public Safety that are no longer needed as evidence and remain unclaimed for more than 18 months from the date the firearms come into the Department’s possession.

Sec. 3. 20 V.S.A. § 2305 is amended to read:

§ 2305. DISPOSITION OF UNLAWFUL FIREARMS

(a) Any ~~unlawful~~ firearm ~~which the commissioner of public safety determines to be unsafe or~~ the possession of which is unlawful per se shall either be destroyed, or if the ~~commissioner of public safety~~ Commissioner of Public Safety ~~deems such to be it~~ deems such to be it appropriate, retained by the ~~department of public safety~~ Department of Public Safety for purposes of forensic science

reference. In no event shall the ~~commissioner of public safety~~ Commissioner of Public Safety dispose of such an ~~unlawful~~ a firearm in any other manner or to any other person.

(b)(1) Except as provided in section 2306 of this title, all ~~other~~ unlawful and abandoned firearms shall either be:

(A) ~~delivered to the state treasurer~~ Commissioner of Buildings and General Services as directed by him or her for ~~disposition by public sale pursuant to the provisions of chapter 13 of Title 27, or by such other manner of sale deemed appropriate by the state treasurer, or sale to a federally licensed~~ firearms dealer pursuant to the Commissioner's authority under Title 29;

(B) ~~at the discretion of the state treasurer~~ Commissioner of Buildings and General Services, donated to a governmental agency or to a nonprofit organization upon the recommendation of the commissioner of fish and wildlife, transferred to the Commissioner of Fish and Wildlife for disposition; or,

(C) ~~if the commissioner of public safety~~ Commissioner of Public Safety deems such to be it appropriate, retained by the ~~department of public safety~~ Department of Public Safety for purposes of forensic science reference.

(2) Notwithstanding the ~~foregoing provision~~ subdivision (1) of this subsection, an unlawful firearm used in the commission of a homicide shall not be delivered to the ~~state treasurer for disposition by public sale~~ Commissioner of Buildings and General Services, but shall be disposed of only in accordance with:

(A) the provisions of subsection (a) of this section in the same manner as unlawful per se firearms; or

(B) section 2306 of this title.

(c) When the firearms sold under this section have been delivered ~~to the commissioner of public safety~~ by a local law enforcement agency, the ~~state treasurer~~ Commissioner of Buildings and General Services shall return two-thirds of the net proceeds from the sale to the appropriate municipality. The remaining proceeds shall be allocated pursuant to the authority of the Commissioner of Buildings and General Services under 29 V.S.A. § 1557. Proceeds allocated to a municipality under this subsection shall, to the extent needed by the municipality, be used to offset the costs of storing nonevidentiary firearms.

(d) No State agency or department or State official shall be subject to any civil, criminal, administrative, or regulatory liability for any act taken or omission made in reliance on the provisions of this chapter.

Sec. 4. 20 V.S.A. § 2306 is amended to read:

§ 2306. RIGHTS OF INNOCENT OWNER

Nothing contained in subsection 2305(b) of this title shall prejudice the rights of the bona fide owner of any unlawful firearm, the disposition of which is governed by that subsection, upon affirmative proof by him or her that he or she had no express or implied knowledge that such unlawful firearm was being or intended to be used illegally or for illegal purposes. If the bona fide owner provides reasonable and satisfactory proof of his or her ownership and of his or her lack of express or implied knowledge to the ~~commissioner of public safety~~ Commissioner of Public Safety, the unlawful firearm shall be returned to him or her. If the ~~commissioner of public safety~~ Commissioner of Public Safety determines that the proof offered is not satisfactory or reasonable, the person may, within 14 days, request a hearing before the ~~state treasurer~~ Commissioner of Buildings and General Services and the ~~commissioner of public safety~~ Commissioner of Public Safety, jointly. The ~~state treasurer~~ Commissioner of Buildings and General Services and the ~~commissioner of public safety~~ Commissioner of Public Safety shall promptly hold a hearing on any claim filed under this section, in accordance with the provisions for contested cases in 3 V.S.A. chapter 25 of Title 3.

Sec. 5. 20 V.S.A. § 2307 is amended to read:

§ 2307. FIREARMS RELINQUISHED PURSUANT TO RELIEF FROM
ABUSE ORDER; STORAGE; FEES; RETURN

* * *

(2)(A)(i) If the owner fails to retrieve the firearm, ammunition, or weapon and pay the applicable storage fee within 90 days of the court order releasing the items, the firearm, ammunition, or weapon may be sold for fair market value. Title to the items shall pass to the law enforcement agency or firearms dealer for the purpose of transferring ownership, except that the Vermont State Police shall follow the procedure described in section 2305 of this title.

* * *

Sec. 6. 13 V.S.A. § 4019 is added to read:

§ 4019. FIREARMS TRANSFERS; BACKGROUND CHECKS

(a) As used in this section:

(1) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.

(2) “Immediate family member” means a spouse, parent, stepparent, child, stepchild, sibling, stepsibling, grandparent, stepgrandparent, grandchild, stepgrandchild, greatgrandparent, stepgreatgrandparent, greatgrandchild, and

stepgreatgrandchild.

(3) “Law enforcement officer” shall have the same meaning as in subdivision 4016(a)(4) of this title.

(4) “Licensed dealer” means a person issued a license as a dealer in firearms pursuant to 18 U.S.C. § 923(a).

(5) “Proposed transferee” means an unlicensed person to whom a proposed transferor intends to transfer a firearm.

(6) “Proposed transferor” means an unlicensed person who intends to transfer a firearm to another unlicensed person.

(7) “Transfer” means to transfer ownership of a firearm by means of sale, trade, or gift.

(8) “Unlicensed person” means a person who has not been issued a license as a dealer, importer, or manufacturer in firearms pursuant to 18 U.S.C. § 923(a).

(b)(1) Except as provided in subsection (e) of this section, an unlicensed person shall not transfer a firearm to another unlicensed person unless:

(A) the proposed transferor and the proposed transferee physically appear together with the firearm before a licensed dealer and request that the licensed dealer facilitate the transfer; and

(B) the licensed dealer agrees to facilitate the transfer.

(2) A person shall not, in connection with the transfer or attempted transfer of a firearm pursuant to this section, knowingly make a false statement or exhibit a false identification intended to deceive a licensed dealer with respect to any fact material to the transfer.

(c)(1) A licensed dealer who agrees to facilitate a firearm transfer pursuant to this section shall comply with all requirements of State and federal law and shall, unless otherwise expressly provided in this section, conduct the transfer in the same manner as the licensed dealer would if selling the firearm from his or her own inventory, but shall not be considered a vendor.

(2) A licensed dealer shall return the firearm to the proposed transferor and decline to continue facilitating the transfer if the licensed dealer determines that the proposed transferee is prohibited by federal or State law from purchasing or possessing the firearm.

(3) A licensed dealer may charge a reasonable fee to facilitate the transfer of a firearm between a proposed transferor and a proposed transferee pursuant to this section.

(d)(1) An unlicensed person who transfers a firearm to another unlicensed

person in violation of subdivision (b)(1) of this section shall be imprisoned not more than one year or fined not more than \$500.00, or both.

(2) A person who violates subdivision (b)(2) of this section shall be imprisoned not more than one year or fined not more than \$500.00, or both.

(e) This section shall not apply to:

(1) the transfer of a firearm by or to a law enforcement agency;

(2) the transfer of a firearm by or to a law enforcement officer or member of the U.S. Armed Forces acting within the course of his or her official duties;

(3) the transfer of a firearm from one immediate family member to another immediate family member; or

(4) a person who transfers the firearm to another person in order to prevent imminent harm to any person, provided that this subdivision shall only apply while the risk of imminent harm exists.

(f) A licensed dealer who facilitates a firearm transfer pursuant to this section shall be immune from any civil or criminal liability for any actions taken or omissions made when facilitating the transfer in reliance on the provisions of this section. This subsection shall not apply to reckless or intentional misconduct by a licensed dealer.

Sec. 7. 13 V.S.A. § 4020 is added to read:

§ 4020. SALE OF FIREARMS TO PERSONS UNDER 21 YEARS OF AGE PROHIBITED

(a) A person shall not sell a firearm to a person under 21 years of age. A person who violates this subsection shall be imprisoned for not more than one year or fined not more than \$1,000.00, or both.

(b) This section shall not apply to:

(1) a law enforcement officer;

(2) an active or veteran member of the Vermont National Guard, of the National Guard of another state, or of the U.S. Armed Forces;

(3) a person who provides the seller with a certificate of satisfactory completion of a Vermont hunter safety course or an equivalent hunter safety course that is approved by the Commissioner; or

(4) a person who provides the seller with a certificate of satisfactory completion of a hunter safety course in another state or a province of Canada that is approved by the Commissioner.

(c) As used in this section:

(1) “Firearm” shall have the same meaning as in subsection 4017(d) of this title.

(2) “Law enforcement officer” shall have the same meaning as in subsection 4016(a) of this title.

(3) “Commissioner” means the Commissioner of Fish and Wildlife.

Sec. 8. 13 V.S.A. § 4021 is added to read:

§ 4021. LARGE CAPACITY AMMUNITION FEEDING DEVICES

(a) A person shall not manufacture, possess, transfer, offer for sale, purchase, or receive, or import into this State a large capacity ammunition feeding device. As used in this subsection, “import” shall not include the transportation back into this State of a large capacity ammunition feeding device by the same person who transported the device out of State if the person possessed the device on or before the effective date of this act.

(b) A person who violates this section shall be imprisoned for not more than one year or fined not more than \$500.00, or both.

(c)(1) The prohibition on possession of large capacity ammunition feeding devices established by subsection (a) of this section shall not apply to a large capacity ammunition feeding device lawfully possessed on or before the effective date of this act.

(2) The prohibition on possession, transfer, sale, and purchase of large capacity ammunition feeding devices established by subsection (a) of this section shall not apply to a large capacity ammunition feeding device lawfully possessed by a licensed dealer as defined in subdivision 4019(a)(4) of this title prior to the effective date of this act and transferred by the dealer on or before October 1, 2018.

(d)(1) This section shall not apply to any large capacity ammunition feeding device:

(A) manufactured for, transferred to, or possessed by the United States or a department or agency of the United States, or by any state or by a department, agency, or political subdivision of a state;

(B) transferred to or possessed by a federal law enforcement officer or a law enforcement officer certified as a law enforcement officer by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. § 2358, for legitimate law enforcement purposes, whether the officer is on or off duty;

(C) transferred to a licensee under Title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by federal law, or possessed by an employee or contractor of such a licensee on-site for these

purposes, or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(D) possessed by an individual who is retired from service with a law enforcement agency after having been transferred to the individual by the agency upon his or her retirement, provided that the individual is not otherwise prohibited from receiving ammunition;

(E) manufactured, imported, transferred, or possessed by a manufacturer or importer licensed under 18 U.S.C. chapter 44:

(i) for the purposes of testing or experimentation authorized by the U.S. Attorney General, or for product development;

(ii) for repair and return to the person from whom it was received; or

(iii) for transfer in foreign or domestic commerce for delivery and possession outside the State of Vermont; or

(F) transported by a resident of another state into this State for the exclusive purpose of use in an established shooting competition if the device is lawfully possessed under the laws of another state.

(2) This section shall not apply to a licensed dealer as defined in subdivision 4019(a)(4) of this title for the sole purpose of transferring or selling a large capacity ammunition feeding device to a person to whom this section does not apply under subdivision (1) of this subsection (d).

(e)(1) As used in this section, “large capacity ammunition feeding device” means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept:

(A) more than 10 rounds of ammunition for a long gun; or

(B) more than 15 rounds of ammunition for a hand gun.

(2) The term “large capacity ammunition feeding device” shall not include:

(A) an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition;

(B) a large capacity ammunition feeding device that is manufactured or sold solely for use by a lever action or bolt action long gun or by an antique firearm as defined in subdivisions 4017(d)(2)(A) and (B) of this title; or

(C) a large capacity ammunition feeding device that is manufactured or sold solely for use with a firearm that is determined to be a curio or relic by the Bureau of Alcohol, Tobacco, Firearms and Explosives. As used in this subdivision, “curio or relic” means a firearm that is of special interest to

collectors by reason of some quality other than its association with firearms intended for sporting use or as offensive or defensive weapons.

Sec. 9. 13 V.S.A. § 4022 is added to read:

§ 4022. BUMP-FIRE STOCKS; POSSESSION PROHIBITED

(a) As used in this section, “bump-fire stock” means a butt stock designed to be attached to a semiautomatic firearm and intended to increase the rate of fire achievable with the firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate a reciprocating action that facilitates the repeated activation of the trigger.

(b) A person shall not possess a bump-fire stock. A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

(c) The Department of Public Safety shall develop, promote, and execute a collection process that permits persons to voluntarily and anonymously relinquish bump-fire stocks prior to the effective date of this section.

Sec. 10. REPORT; BACKGROUND CHECKS ON PRIVATE FIREARM SALES

On or before December 15, 2018, the Department of Public Safety, the Executive Director of the Department of Sheriffs and State’s Attorneys, and the Vermont Association of Chiefs of Police shall report to the House and Senate Committees on Judiciary regarding establishing an alternative to 13 V.S.A. § 4019 for conducting background checks on private firearms sales. The option shall permit a purchaser to obtain a background check from a law enforcement agency rather than a federally licensed firearms dealer when purchasing the firearm from a private person instead of the dealer. The report shall analyze the cost and efficiency of obtaining the background check from the law enforcement agency rather than the dealer, and shall include a recommendation as to whether such an option should be created by the General Assembly.

Sec. 11. REPEAL

13 V.S.A. § 4021(d)(1)(F) shall be repealed on July 1, 2019.

Sec. 12. EFFECTIVE DATES

(a) This section and Secs. 1-8, and Secs. 10-11 shall take effect on passage.

(b) Sec. 9 (bump stocks) shall take effect on October 1, 2018.