

SUBSTITUTE FOR
HOUSE BILL NO. 4431

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 239 and 239a (MCL 750.239 and 750.239a),
section 239a as added by 1996 PA 496.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 239. (1) ~~All~~ EXCEPT AS PROVIDED IN SUBSECTION (2) AND
2 SUBJECT TO SECTION 239A, ALL pistols, weapons, or devices carried,
3 possessed, or used contrary to this chapter are hereby declared
4 forfeited to the state, and shall be turned over to the
5 ~~commissioner of the Michigan state police or his designated~~
6 ~~representative,~~ DEPARTMENT OF STATE POLICE for such disposition as
7 ~~the commissioner may prescribe~~ DETERMINED APPROPRIATE BY THE
8 DIRECTOR OF THE DEPARTMENT OF STATE POLICE OR HIS OR HER DESIGNATED
9 REPRESENTATIVE.
10 (2) THE DIRECTOR OF THE DEPARTMENT OF STATE POLICE SHALL

1 DISPOSE OF FIREARMS UNDER THIS SECTION BY 1 OF THE FOLLOWING
2 METHODS:

3 (A) BY CONDUCTING A PUBLIC AUCTION IN WHICH FIREARMS RECEIVED
4 UNDER THIS SECTION MAY BE PURCHASED AT A SALE CONDUCTED IN
5 COMPLIANCE WITH SECTION 4708 OF THE REVISED JUDICATURE ACT OF 1961,
6 1961 PA 236, MCL 600.4708, BY INDIVIDUALS AUTHORIZED BY LAW TO
7 POSSESS THOSE FIREARMS.

8 (B) BY DESTROYING THEM.

9 (C) BY ANY OTHER LAWFUL MANNER PRESCRIBED BY THE DIRECTOR OF
10 THE DEPARTMENT OF STATE POLICE.

11 (3) BEFORE DISPOSING OF A FIREARM UNDER THIS SECTION, THE
12 DIRECTOR OF THE DEPARTMENT OF STATE POLICE SHALL DO BOTH OF THE
13 FOLLOWING:

14 (A) DETERMINE THROUGH THE LAW ENFORCEMENT INFORMATION NETWORK
15 WHETHER THE FIREARM HAS BEEN REPORTED LOST OR STOLEN. IF THE
16 FIREARM HAS BEEN REPORTED LOST OR STOLEN AND THE NAME AND ADDRESS
17 OF THE OWNER CAN BE DETERMINED, THE DIRECTOR OF THE DEPARTMENT OF
18 STATE POLICE SHALL PROVIDE 30 DAYS' WRITTEN NOTICE OF HIS OR HER
19 INTENT TO DISPOSE OF THE FIREARM UNDER THIS SECTION TO THE OWNER,
20 AND ALLOW THE OWNER TO CLAIM THE FIREARM WITHIN THAT 30-DAY PERIOD
21 IF HE OR SHE IS AUTHORIZED TO POSSESS THE FIREARM.

22 (B) PROVIDE 30 DAYS' NOTICE TO THE PUBLIC ON THE DEPARTMENT OF
23 STATE POLICE WEBSITE OF HIS OR HER INTENT TO DISPOSE OF THE FIREARM
24 UNDER THIS SECTION. THE NOTICE SHALL INCLUDE A DESCRIPTION OF THE
25 FIREARM AND SHALL STATE THE FIREARM'S SERIAL NUMBER, IF THE SERIAL
26 NUMBER CAN BE DETERMINED. THE DEPARTMENT OF STATE POLICE SHALL
27 ALLOW THE OWNER OF THE FIREARM TO CLAIM THE FIREARM WITHIN THAT 30-

1 DAY PERIOD IF HE OR SHE IS AUTHORIZED TO POSSESS THE FIREARM. THE
2 30-DAY PERIOD REQUIRED UNDER THIS SUBDIVISION IS IN ADDITION TO THE
3 30-DAY PERIOD REQUIRED UNDER SUBDIVISION (A) .

4 (4) THE DEPARTMENT OF STATE POLICE IS IMMUNE FROM CIVIL
5 LIABILITY FOR DISPOSING OF A FIREARM IN COMPLIANCE WITH THIS
6 SECTION.

7 Sec. 239a. ~~(1) Before a firearm is turned over for disposal~~
8 ~~under section 239, the police agency that recovered or confiscated~~
9 ~~the firearm shall determine if there is a known legal owner of the~~
10 ~~firearm and whether the firearm has been reported stolen. If the~~
11 ~~police agency determines a serial number has been eradicated from~~
12 ~~the firearm, the police agency shall submit the firearm to the~~
13 ~~department of state police or a forensic laboratory for serial~~
14 ~~number restoration to determine legal ownership. In making the~~
15 ~~determination of ownership required under this subsection, the~~
16 ~~police agency shall review information contained in the law~~
17 ~~enforcement information network and examine that police agency's~~
18 ~~stolen property reports. If the police agency determines the~~
19 ~~firearm is stolen, the police agency shall notify the agency~~
20 ~~reporting the firearm as stolen and return the firearm to that~~
21 ~~agency at the conclusion of the criminal case. The agency receiving~~
22 ~~the firearm shall notify the legal owner and provide for~~
23 ~~disposition of the firearm in compliance with subsections (3) and~~
24 ~~(4).~~

25 ~~—— (2) If the owner is not alleged to have been involved in the~~
26 ~~violation for which forfeiture is required or did not knowingly~~
27 ~~allow the firearm to be possessed illegally, notification shall be~~

~~given at the conclusion of the criminal case but not later than 90 days before the firearm is disposed of under section 239.~~

~~Notification under this subsection may be given by certified mail sent to the owner's last known address, or by personal contact with the owner.~~

~~—— (3) The police agency shall return a firearm to its owner if the owner claims the firearm within the notification period and that police agency determines that the owner was not involved in the violation for which the firearm was seized. Except as otherwise provided in subsection (2), a firearm shall be returned under this subsection within 30 days after the firearm is claimed by the owner unless the owner is prohibited from possessing a firearm under state or federal law.~~

~~—— (4) An individual claiming ownership of a firearm may petition the circuit court for return of a firearm under this section if return of the firearm is denied by the police agency or if the firearm is not returned within 30 days as required under subsection (3). The police agency shall not dispose of a firearm until the expiration of the 30-day period or, if a petition is filed under this subsection, until permitted to do so by the court.~~

~~—— (5) A police agency shall turn confiscated weapons over to the department of state police under section 239 not more than 1 year after final conclusion of the criminal case and expiration of the appeal period. The police agency shall first make a reasonable effort to contact the owner of the firearm to determine whether a demand for the firearm is forthcoming.~~

~~—— (6) A police agency that seizes a firearm for forfeiture under~~

~~this act shall exercise reasonable care to protect the firearm from loss or damage while the firearm is in its custody.~~

~~———— (7) As used in this section, "police agency" means 1 or more of the following:~~

~~———— (a) The department of state police.~~

~~———— (b) A county sheriff's department.~~

~~———— (c) A police department or public safety department of a local unit of government.~~

~~———— (d) A police department or public safety department of a college or university.~~

(1) A LAW ENFORCEMENT AGENCY THAT SEIZES OR OTHERWISE COMES INTO POSSESSION OF A FIREARM OR A PART OF A FIREARM SUBJECT TO DISPOSAL UNDER SECTION 14 MAY, INSTEAD OF FORWARDING THE FIREARM OR PART OF A FIREARM TO THE DIRECTOR OF THE DEPARTMENT OF STATE POLICE OR HIS OR HER DESIGNATED REPRESENTATIVE FOR DISPOSAL UNDER THAT SECTION, RETAIN THAT FIREARM OR PART OF A FIREARM FOR THE FOLLOWING PURPOSES:

(A) FOR LEGAL SALE OR TRADE TO A FEDERALLY LICENSED FIREARM DEALER. THE PROCEEDS FROM ANY SALE OR TRADE UNDER THIS SUBDIVISION SHALL BE USED BY THE LAW ENFORCEMENT AGENCY ONLY FOR LAW ENFORCEMENT PURPOSES. THE LAW ENFORCEMENT AGENCY SHALL NOT SELL OR TRADE A FIREARM OR PART OF A FIREARM UNDER THIS SUBDIVISION TO ANY INDIVIDUAL WHO IS A MEMBER OF THAT LAW ENFORCEMENT AGENCY UNLESS THE INDIVIDUAL IS A FEDERALLY LICENSED FIREARMS DEALER AND THE SALE IS MADE PURSUANT TO A PUBLIC AUCTION.

(B) FOR OFFICIAL USE BY MEMBERS OF THE SEIZING LAW ENFORCEMENT AGENCY WHO ARE EMPLOYED AS PEACE OFFICERS. A FIREARM OR PART OF A

1 FIREARM SHALL NOT BE SOLD UNDER THIS SUBDIVISION.

2 (2) A LAW ENFORCEMENT AGENCY THAT SELLS OR TRADES ANY PISTOL
3 TO A LICENSED DEALER UNDER SUBSECTION (1) (A) OR RETAINS ANY PISTOL
4 UNDER SUBSECTION (1) (B) SHALL COMPLETE A RECORD OF THE TRANSACTION
5 UNDER SECTION 2 OR SECTION 2A, AS APPLICABLE.

6 (3) A LAW ENFORCEMENT AGENCY THAT SELLS OR TRADES A FIREARM OR
7 PART OF A FIREARM UNDER THIS SECTION SHALL RETAIN A RECEIPT OF THE
8 SALE OR TRADE FOR A PERIOD OF NOT LESS THAN 7 YEARS. THE LAW
9 ENFORCEMENT AGENCY SHALL MAKE ALL RECEIPTS RETAINED UNDER THIS
10 SUBSECTION AVAILABLE FOR INSPECTION BY THE DEPARTMENT OF STATE
11 POLICE UPON DEMAND AND FOR AUDITING PURPOSES BY THE STATE AND THE
12 LOCAL UNIT OF GOVERNMENT OF WHICH THE AGENCY IS A PART.

13 (4) BEFORE DISPOSING OF A FIREARM UNDER THIS SECTION, THE LAW
14 ENFORCEMENT AGENCY SHALL DO BOTH OF THE FOLLOWING:

15 (A) DETERMINE THROUGH THE LAW ENFORCEMENT INFORMATION NETWORK
16 WHETHER THE FIREARM HAS BEEN REPORTED LOST OR STOLEN. IF THE
17 FIREARM HAS BEEN REPORTED LOST OR STOLEN AND THE NAME AND ADDRESS
18 OF THE OWNER CAN BE DETERMINED, THE LAW ENFORCEMENT AGENCY SHALL
19 PROVIDE 30 DAYS' WRITTEN NOTICE OF ITS INTENT TO DISPOSE OF THE
20 FIREARM UNDER THIS SECTION TO THE OWNER, AND ALLOW THE OWNER TO
21 CLAIM THE FIREARM WITHIN THAT 30-DAY PERIOD IF HE OR SHE IS
22 AUTHORIZED TO POSSESS THE FIREARM.

23 (B) PROVIDE 30 DAYS' NOTICE TO THE PUBLIC ON A WEBSITE
24 MAINTAINED BY THE LAW ENFORCEMENT AGENCY OF ITS INTENT TO DISPOSE
25 OF THE FIREARM UNDER THIS SECTION. THE NOTICE SHALL INCLUDE A
26 DESCRIPTION OF THE FIREARM AND SHALL STATE THE FIREARM'S SERIAL
27 NUMBER, IF THE SERIAL NUMBER CAN BE DETERMINED. THE LAW ENFORCEMENT

1 AGENCY SHALL ALLOW THE OWNER OF THE FIREARM TO CLAIM THE FIREARM
2 WITHIN THAT 30-DAY PERIOD IF HE OR SHE IS AUTHORIZED TO POSSESS THE
3 FIREARM. THE 30-DAY PERIOD REQUIRED UNDER THIS SUBDIVISION IS IN
4 ADDITION TO THE 30-DAY PERIOD REQUIRED UNDER SUBDIVISION (A).

5 (5) THE LAW ENFORCEMENT AGENCY IS IMMUNE FROM CIVIL LIABILITY
6 FOR DISPOSING OF A FIREARM IN COMPLIANCE WITH THIS SECTION.

7 (6) AS USED IN THIS SECTION, "LAW ENFORCEMENT AGENCY" MEANS
8 ANY AGENCY THAT EMPLOYS PEACE OFFICERS.

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. 212 of the 95th Legislature is enacted into
11 law.