

AN ACT

To amend sections 737.32 and 2933.41 and to enact sections 505.105, 505.106, 505.107, 505.108, 505.109, and 505.991 of the Revised Code to permit municipal and township police departments to dispose of certain unclaimed property by donating it to public agencies or nonprofit organizations and to authorize township police departments to dispose of stolen or other recovered property in generally the same manner as the statutory procedure used by some municipal corporations.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 737.32 and 2933.41 be amended and sections 505.105, 505.106, 505.107, 505.108, 505.109, and 505.991 of the Revised Code be enacted to read as follows:

Sec. 505.105. Stolen or other property recovered by members of an organized police department of a township, a township police district, a joint township police district, or the office of a township constable shall be deposited and kept in a place designated by the head of the department, district, or office. Each article of property shall be entered in a book kept for that purpose, with the name of its owner, if ascertained, the person from whom it was taken, the place where it was found with general circumstances, the date of its receipt, and the name of the officer receiving it.

An inventory of all money or other property shall be given to the party from whom it was taken, and, if it is not claimed by some person within thirty days after arrest and seizure, it shall be delivered to the person from whom it was taken, and to no other person, either attorney, agent, factor, or clerk, except by special order of the head of the department, district, or office.

Sec. 505.106. No officer, or other member of an organized police department of a township, a township police district, a joint township police district, or the office of a township constable shall neglect or refuse to

deposit property taken or found by the officer or other member in possession of a person arrested. Any conviction for a violation of this section shall vacate the office of the person so convicted.

Sec. 505.107. If, within thirty days, the money or property recovered under section 505.105 of the Revised Code is claimed by any other person, it shall be retained by its custodian until after the discharge or conviction of the person from whom it was taken and as long as it is required as evidence in any case in court. If that claimant establishes to the satisfaction of the court that the claimant is the rightful owner, the money or property shall be restored to the claimant; otherwise, it shall be returned to the accused person, personally, and not to any attorney, agent, factor, or clerk of the accused person, except upon special order of the head of the organized police department of the township, township police district, joint township police district, or office of a township constable, as the case may be, after all liens and claims in favor of the township have first been discharged and satisfied.

Sec. 505.108. Except AS OTHERWISE PROVIDED IN THIS SECTION AND UNLESS THE PROPERTY INVOLVED IS REQUIRED TO BE DISPOSED OF PURSUANT TO ANOTHER SECTION OF THE REVISED CODE, PROPERTY THAT IS UNCLAIMED FOR NINETY DAYS OR MORE SHALL BE SOLD BY THE CHIEF OF POLICE or OTHER HEAD OF THE organized police department of the TOWNSHIP, TOWNSHIP POLICE DISTRICT, JOINT TOWNSHIP POLICE DISTRICT, OR OFFICE OF a TOWNSHIP CONSTABLE AT PUBLIC AUCTION, AFTER NOTICE OF THE SALE HAS BEEN PROVIDED BY PUBLICATION once A WEEK FOR THREE SUCCESSIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY, OR COUNTIES, IF APPROPRIATE, IN THE CASE OF A JOINT TOWNSHIP POLICE DISTRICT. THE PROCEEDS OF THE SALE SHALL BE PAID TO THE CLERK OF THE TOWNSHIP AND CREDITED TO THE TOWNSHIP GENERAL FUND, except that, IN THE CASE OF A JOINT TOWNSHIP POLICE DISTRICT, THE PROCEEDS OF A SALE SHALL BE PAID TO THE CLERK OF THE MOST POPULOUS PARTICIPATING TOWNSHIP AND CREDITED TO THE APPROPRIATE TOWNSHIP GENERAL FUND OR FUNDS ACCORDING TO AGREEMENT OF THE PARTICIPATING TOWNSHIPS.

IF AUTHORIZED TO DO SO BY a RESOLUTION ADOPTED BY THE BOARD OF TOWNSHIP TRUSTEES OR, IN THE CASE OF A JOINT TOWNSHIP POLICE DISTRICT, EACH PARTICIPATING

BOARD OF TOWNSHIP TRUSTEES, AND if THE PROPERTY INVOLVED IS not REQUIRED TO BE DISPOSED OF PURSUANT TO ANOTHER SECTION OF THE REVISED CODE, THE HEAD OF THE DEPARTMENT, DISTRICT, OR OFFICE MAY CONTRIBUTE PROPERTY THAT IS UNCLAIMED FOR NINETY DAYS OR MORE TO ONE OR MORE PUBLIC AGENCIES, TO ONE OR MORE NONPROFIT ORGANIZATIONS NO PART OF THE NET INCOME OF WHICH INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL AND NO SUBSTANTIAL PART OF THE ACTIVITIES OF WHICH CONSISTS OF CARRYING ON PROPAGANDA OR OTHERWISE ATTEMPTING TO INFLUENCE LEGISLATION, OR TO ONE OR MORE ORGANIZATIONS SATISFYING SECTION 501(c)(3) or (c)(19) OF THE INTERNAL REVENUE CODE OF 1986.

Sec. 505.109. Upon the sale of any unclaimed property as provided in section 505.108 of the Revised Code, if any of the unclaimed property was ordered removed to a place of storage or stored, or both, by or under the direction of the head of the organized police department of the township, township police district, joint township police district, or office of a township constable, any expenses or charges for the removal or storage, or both, and costs of sale, provided they are approved by the head of the department, district, or office, shall first be paid from the proceeds of the sale. Notice shall be given by certified mail, thirty days before the date of the sale, to the owner and mortgagee, or other lienholder, at their last known addresses.

Sec. 505.991. Whoever violates section 505.106 of the Revised Code shall be fined not less than twice the value of any property not deposited as provided by that section, but not more than three thousand dollars, or imprisoned not more than thirty days, or both.

Sec. 737.32. ~~Property~~, Except as otherwise provided in this section and unless the property involved is required to be disposed of pursuant to another section of the Revised Code, property that is unclaimed for ~~the period of~~ ninety days; or more shall be sold by the chief of police of the municipal corporation, marshal of the village, or licensed auctioneer at public auction, after ~~giving due notice thereof~~ of the sale has been provided by advertisement, published publication once a week for three successive weeks in a newspaper of general circulation in the county. The proceeds of the sale shall be paid to the treasurer of the municipal corporation and shall be credited to the general fund of the municipal corporation.

If authorized to do so by an ordinance adopted by the legislative

authority of the municipal corporation and if the property involved is not required to be disposed of pursuant to another section of the Revised Code, the chief of police or marshal may contribute property that is unclaimed for ninety days or more to one or more public agencies, to one or more nonprofit organizations no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation, or to one or more organizations satisfying section 501(c)(3) or (c)(19) of the Internal Revenue Code of 1986.

Sec. 2933.41. (A)(1) Any property, other than contraband that is subject to the provisions of section 2913.34 or 2933.43 of the Revised Code, other than property that is subject to section 3719.141 of the Revised Code, other than property that is forfeited under sections 2923.44 to 2923.47 or 2925.41 to 2925.45 of the Revised Code, other than a vehicle that is criminally forfeited under an order issued under section 4503.233 or 4503.234 of the Revised Code and that is to be disposed of under section 4503.234 of the Revised Code, other than property that has been lawfully seized under sections 2933.71 to 2933.75 of the Revised Code in relation to a medicaid fraud offense, and other than property that has been lawfully seized in relation to a violation of section 2923.32 of the Revised Code, that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency shall be kept safely pending the time it no longer is needed as evidence and shall be disposed of pursuant to this section. Each law enforcement agency that has custody of any property that is subject to this section shall adopt a written internal control policy that addresses the keeping of detailed records as to the amount of property taken in by the agency, that addresses the agency's disposition of the property under this section, that provides for the keeping of detailed records of the disposition of the property, and that provides for the keeping of detailed financial records of the amount and disposition of any proceeds of a sale of the property under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount expended on each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. The policy is a public record open for inspection under section 149.43 of the Revised Code.

(2)(a) Every law enforcement agency that has any lost, abandoned, stolen, seized, or forfeited property as described in division (A)(1) of this section in its custody shall comply with its written internal control policy

adopted under that division relative to the property. Each agency that has any such property ~~of that nature~~ in its custody, except for property to be disposed of under division (D)(4) of this section, shall maintain an accurate record, in accordance with its written internal control policy, of each item of the property. The record shall include the date on which each item of property came into the agency's custody, the manner in which it was disposed of, the date of its disposition, the name of the person who received the property if it was not destroyed, and all other information required by the agency's written internal control policy; however, the record shall not identify or enable the identification of the individual officer who seized any item of property. The record of any property that no longer is needed as evidence, and all financial records of the amount and disposition of any proceeds of a sale under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount of each general type of expenditure, shall be open to public inspection during the agency's regular business hours.

Each law enforcement agency that, during any calendar year, has any seized or forfeited property as described in division (A)(1) of this section in its custody shall prepare a report covering the calendar year that cumulates all of the information contained in all of the records kept by the agency pursuant to this division for that calendar year and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(b) Each law enforcement agency that receives in any calendar year any proceeds of a sale under division (D)(8) of this section shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (D)(2)(a) of this section for that calendar year and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(c) Not later than the fifteenth day of April in the calendar year in which reports are sent to the attorney general under divisions (A)(2)(a) and (b) of this section, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law

enforcement agencies reports of the type described in division (A)(2)(a), (A)(2)(b), or both (A)(2)(a) and (b) of this section, whichever is applicable, that cover the previous calendar year and indicates that the reports were received under division (A)(2)(a), (A)(2)(b), or both (A)(2)(a) and (b) of this section, whichever is applicable;

(ii) Indicates that the reports are open for inspection under section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(B) A law enforcement agency that has property in its possession that is required to be disposed of pursuant to this section shall make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county, briefly describing the nature of the property in custody and inviting persons to view and establish their right to it.

(C) A person loses any right that the person may have to the possession, or the possession and ownership, of property if any of the following applies:

(1) The property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and the person is a conspirator, accomplice, or offender with respect to the offense.

(2) A court determines that the property should be forfeited because, in light of the nature of the property or the circumstances of the person, it is unlawful for the person to acquire or possess the property.

(D) Unclaimed or forfeited property in the custody of a law enforcement agency, other than contraband that is subject to the provisions of section 2913.34 or 2933.43 of the Revised Code, other than property forfeited under sections 2923.44 to 2923.47 or 2925.41 to 2925.45 of the Revised Code, and other than property that has been lawfully seized in relation to a violation of section 2923.32 of the Revised Code, shall be disposed of on application to and order of any court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities, as follows:

(1) Drugs shall be disposed of pursuant to section 3719.11 of the Revised Code or placed in the custody of the secretary of the treasury of the United States for disposal or use for medical or scientific purposes under

applicable federal law.

(2) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collectors' items may be sold at public auction pursuant to division (D)(8) of this section. Other firearms and dangerous ordnance shall be destroyed by the agency or shall be sent to the bureau of criminal identification and investigation for destruction by the bureau.

(3) Obscene materials shall be destroyed.

(4) Beer, intoxicating liquor, or alcohol seized from a person who is not the holder of a permit issued under Chapters 4301. and 4303. of the Revised Code or is an offender and forfeited to the state under section 4301.45 or 4301.53 of the Revised Code either shall be sold by the division of liquor control, if the division determines that the beer, intoxicating liquor, or alcohol is fit for sale, or shall be placed in the custody of the investigations unit in the department of public safety and be used for training relating to law enforcement activities. The department, with the assistance of the division of liquor control, shall adopt rules in accordance with Chapter 119. of the Revised Code to provide for the distribution of such beer, intoxicating liquor, or alcohol to state or local law enforcement agencies upon their request. If any tax imposed under Title XLIII of the Revised Code has not been paid in relation to the beer, intoxicating liquor, or alcohol, the proceeds of the sale shall first be used to pay the tax. All other money collected under division (D)(4) of this section shall be paid into the state treasury. Any such beer, intoxicating liquor, or alcohol that the division determines to be unfit for sale shall be destroyed.

(5) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner shall be returned to the sender, if known, or deposited in the inmates' industrial and entertainment fund if the sender is not known.

(6) Vehicles and vehicle parts forfeited under sections 4549.61 to 4549.63 of the Revised Code may be given to a law enforcement agency for use in the performance of its duties. Those parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives of them may be sold or disposed of as provided by rules of the director of public safety. Parts from which a vehicle identification number or derivative of it has been removed, defaced, covered, altered, or destroyed and that are not suitable for police work or incorporation into an official vehicle shall be destroyed and sold as junk or scrap.

(7)(a) Computers, computer networks, computer systems, and computer software suitable for police work may be given to a law enforcement agency for that purpose. Other computers, computer networks, computer systems, and computer software shall be disposed of pursuant to division (D)(8) of this section.

(b) As used in this section, "computers," "computer networks," "computer systems," and "computer software" have the same meanings as in section 2913.01 of the Revised Code.

(8) Other unclaimed or forfeited property, with the approval of the court, may be used by the law enforcement agency that has possession of it. If the other unclaimed or forfeited property is not used by the law enforcement agency, it may be sold, without appraisal, at a public auction to the highest bidder for cash, or, in the case of other unclaimed or forfeited moneys, disposed of in another manner that the court considers proper in the circumstances.

(E)(1)(a) If the property was in the possession of the law enforcement agency in relation to a delinquent child proceeding in a juvenile court, ten per cent of the proceeds from property disposed of pursuant to this section shall be applied to one or more alcohol and drug addiction treatment programs that are certified by the department of alcohol and drug addiction services under section 3793.06 of the Revised Code and that are specified by the court in its order issued under division (D) of this section. A juvenile court shall not specify an alcohol or drug addiction treatment program in the order unless the program is a certified alcohol and drug addiction treatment program and, except as provided in division (E)(1)(a) of this section, unless the program is located in the county in which the court that issues the orders is located or in a contiguous county. If no certified alcohol and drug addiction treatment program is located in any of those counties, the juvenile court may specify in the order a certified alcohol and drug addiction treatment program located anywhere within this state. The remaining ninety per cent of the proceeds shall be applied as provided in ~~divisions~~ division (E)(1)(b) of this section.

If the property was in the possession of the law enforcement agency other than in relation to a delinquent child proceeding in a juvenile court, all of the proceeds from property disposed of pursuant to this section shall be applied as provided in division (E)(1)(b) of this section.

(b) Except as provided in divisions (D)(4), (5), and (E)(2) of this section and after compliance with division (E)(1)(a) of this section when that division is applicable, the proceeds from property disposed of pursuant to this section shall be placed in the general fund of the state, the county, the

township, or the municipal corporation, of which the law enforcement agency involved is an agency.

(2) Each board of county commissioners that recognizes a citizens' reward program as provided in section 9.92 of the Revised Code shall notify each law enforcement agency of that county and each law enforcement agency of a township or municipal corporation wholly located in that county of the official recognition of the citizens' reward program by filing a copy of its resolution conferring that recognition with each of those law enforcement agencies. When the board of county commissioners of a county recognizes a citizens' reward program and the county includes a part, but not all, of the territory of a municipal corporation, the board shall so notify the law enforcement agency of that municipal corporation of the official recognition of the citizens' reward program only if the county contains the highest percentage of the municipal corporation's population. Upon receipt of a notice ~~of that nature~~ described in this division, each law enforcement agency shall pay twenty-five per cent of the proceeds from each sale of property disposed of pursuant to this section to the citizens' reward program for use exclusively for the payment of rewards. No part of those funds may be used to pay for the administrative expenses or any other expenses associated with a citizens' reward program. If a citizens' reward program that operates in more than one county or in another state or states in addition to this state receives funds pursuant to this section, the funds shall be used to pay rewards only for tips and information to law enforcement agencies concerning felonies, offenses of violence, or misdemeanors that have been committed in the county from which the funds were received.

(F) This section does not apply to the collection, storage, or disposal of abandoned junk motor vehicles. This section shall not be construed to rescind or restrict the authority of a municipal law enforcement agency to keep and dispose of lost, abandoned, stolen, seized, or forfeited property under an ordinance of the municipal corporation or under sections 737.29 to 737.33 of the Revised Code, provided that, when a municipal corporation that has received notice as provided in division (E)(2) of this section disposes of property under an ordinance ~~of that nature~~, it shall pay twenty-five per cent of the proceeds from any sale or auction to the citizens' reward program as provided under that division.

(G) The receipt of funds by a citizens' reward program pursuant to division (E) of this section does not make it a governmental unit for purposes of section 149.43 of the Revised Code and does not subject it to the disclosure provisions of that section.

(H) This section does not apply to the disposal of stolen or other

property recovered by township law enforcement agencies pursuant to sections 505.105 to 505.109 of the Revised Code.

(I) For purposes of this section, "law enforcement agency" includes correctional institutions. ~~As used in this section, and~~ "citizens' reward program" has the same meaning as in section 9.92 of the Revised Code. As used in division (H) of this section, "township law enforcement agencies" means an organized police department of a township, a township police district, a joint township police district, or the office of a township constable.

SECTION 2. That existing sections 737.32 and 2933.41 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 55

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____