

## Title 16. Crimes and Offenses

## Chapter 23. Offenses Involving Weapons

## Article 1. Pistols

**16-23-10. Definitions.** When used in this article:

(1) "**Handgun**" means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges.

(2) "**Dealer**" means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.

(3) "**Crime of violence**" means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

(4) "**Fugitive from justice**" means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

(5) "**Subversive organization**" means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

(6) "**Conviction**" as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

(7) "**Division**" means the State Law Enforcement Division.

(8) **The terms "purchase" or "sell"** means to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.

(9) "**Person**" means any individual, corporation, company, association, firm, partnership, society or joint stock company.

(10) "**Luggage compartment**" means the trunk of a motor vehicle which has a trunk; however, with respect to a motor vehicle which does not have a trunk, the term "luggage compartment" refers to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried. In a station wagon, van, hatchback vehicle, or sport utility vehicle, the term "luggage compartment" refers to the area behind, but not under, the rearmost seat. In a truck, the term "luggage compartment" refers to the area behind the rearmost seat, but not under the front seat.

**16-23-30.** Sale or delivery of handgun to and possession by certain persons unlawful; stolen handguns.

(A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

(1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths,

territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;

(2) a person who is a member of a subversive organization;

(3) a person under the age of eighteen, but this shall not apply to the issue of handguns to members of the Armed Forces of the United States, active or reserve, National Guard, State Militia, or R. O. T. C., when on duty or training or the temporary loan of handguns for instructions under the immediate supervision of a parent or adult instructor; or

(4) a person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a firearm, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but a person who is the subject of such an application is entitled to reasonable notice and a proper hearing prior to any such adjudication."

(B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

(C) A person shall not knowingly buy, sell, transport, pawn, receive or possess any stolen handgun or one from which the original serial number has been removed or obliterated.

**16-23-50. Penalties;** disposition of fines; forfeiture and disposition of handguns.

(A)(1) A person, including a dealer, who violates the provisions of this article, except Section 16-23-20, is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(2) A person violating the provisions of Section 16-23-20 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(B) In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated handgun may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell handgun in this State for a handgun or any other equipment approved by the agency, or destroy it. A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handgun received by the law enforcement agencies under the provisions of this article.

**16-23-55. Procedure for returning found handgun.**

(A) A handgun that is found and turned over to a law enforcement agency must be held for a period of ninety days. During that period, the agency shall make a diligent effort to determine:

(1) if the handgun is stolen;

(2) if the handgun has been used in the commission of a crime; and (3) the true owner of the handgun.

(B) At least twice during the ninety-day holding period, the agency shall advertise the handgun with its full description in a newspaper having general circulation in the county where the handgun was found.

(C) After the ninety days have elapsed from publication of the first advertisement, and upon request of the individual who found and turned over the handgun, the agency shall return the handgun to this person if the individual fully completes the application process as described in Section 23-31-140 and in federal law, and pays all advertising and other costs incidental to returning the handgun. No handgun may be returned until the individual fully completes the application.

(D) Upon proper completion of the application, the law enforcement agency shall provide copies of the application in compliance with Section 23-31-140.

## Article 3. Machineguns, Sawed-off Shotguns and Rifles

**16-23-210. Definitions.** When used in this article:

(a) "**Machine gun**" applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) "**Sawed-off shotgun**" means a shotgun having a barrel or barrels of less than eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than eighteen inches in length.

(c) "**Shotgun**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

(d) "**Sawed-off rifle**" means a rifle having a barrel or barrels of less than sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than sixteen inches in length.

(e) "**Rifle**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to

fire a fixed cartridge but does not include an antique firearm as described in this section.

(f) "**Antique firearm**" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(g) "**Military firearm**" means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shot-gun which fires only one shot for each pull of the trigger.

**16-23-220. Unlawful transportation of machine gun, military firearm, or sawed-off shotgun or rifle within State.** It is unlawful for a person to transport from one place to another in this State or for any railroad company, express company, or other common carrier or any officer, agent, or employee of any of them or other person acting in their behalf knowingly to ship or to transport from one place to another in this State a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in Sections 16-23-250 and 23-31-330.

A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16-23-260.

**16-23-230. Unlawful storing, keeping, or possessing of machine gun, military firearm, or sawed-off shotgun or rifle.** It is unlawful for a person to store, keep, possess, or have in possession or permit another to store, keep, possess, or have in possession a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in Sections 16-23-250 and 23-31-330.

A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16-23-260.

**16-23-240. Unlawful sale, rental, or giving away of machine gun, military firearm, or sawed-off shotgun or rifle; exceptions.** It is unlawful for a person to sell, rent, give away, or participate in any manner, directly or indirectly, in the sale, renting, giving away, or otherwise disposing of a machine gun, or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle, except as provided in Sections 16-23-250 and 23-31-330.

A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16-23-260.

**16-23-250. Exceptions to application of article.** The provisions of this article do not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of these organizations. Any peace officer of the State or of a county or other political subdivision, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of a state prison, correction facility, workhouse, county jail, city jail, or other in-

stitution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or persons on duty in the postal service of the United States or a common carrier while transporting direct to a police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun, or sawed-off rifle, may possess machine guns, or sawed-off shotguns, or sawed-off rifles, when required in the performance of their duties. The provisions of this section must not be construed to apply to machine guns, or sawed-off shotguns, or sawed-off rifles kept for display as relics and which are rendered harmless and not usable.

The provisions of this article do not apply to a manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. Section 921 et seq., a person authorized to possess these weapons by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization, a common or contract carrier transporting or shipping any machine gun or military firearm to or from the manufacturer if the transportation or shipment is not prohibited by federal law, or persons licensed pursuant to Section 23-31-370.

**16-23-260. Penalties.** A person violating the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

**16-23-270. Article not applicable to antique firearms.** The provisions of this article shall not apply to antique firearms.

**16-23-280. Manufacture and sale of machine guns by licensed manufacturer.** Notwithstanding the provisions of this article, machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally manufactured, transported, possessed, and sold within the State by the manufacturer thereof.

## Article 5. Miscellaneous Offenses

**16-23-405. Definition of "weapon"; confiscation and disposition of weapons used in commission or in furtherance of crime.**

(A) Except for the provisions relating to rifles and shotguns in Section 16-23-460, as used in this chapter, 'weapon' means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.

(B) A person convicted of a crime, in addition to a penalty, shall have a weapon used in the commission or in furtherance of the crime confiscated. Each weapon must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated weapon may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell pistols in this State for a pistol or other equipment approved by the agency, or destroy it. A weapon may not be disposed of until the results of all legal proceedings in which it may be involved are finally determined. A firearm seized by the State

Law Enforcement Division may be kept by the division for use by its forensic laboratory.

**16-23-410. Pointing firearm at any person**

It is unlawful for a person to present or point at another person a loaded or unloaded firearm.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years. This section must not be construed to abridge the right of self-defense or to apply to theatricals or like performances.

**16-23-420. Carrying or displaying firearms in public buildings or areas adjacent thereto.**

(A) It is unlawful for a person to possess a firearm of any kind any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly-owned building, without the express permission of the authorities in charge of the premises or property.

(B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of the buildings is also exempted from the provisions of this section.

(E) For purposes of this section, the terms 'premises' and 'property' do not include state or locally owned or maintained roads, streets, or rights-of-way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, which are open full time to public vehicular traffic.

(F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any premises, property, or building that is part of an interstate highway rest area facility.

**16-23-430. Carrying weapons on school property.**

(1) It shall be unlawful for any person, except State, county or municipal law-enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms or any other type of weapon, device or object which may be used to inflict bodily injury or death.

(2) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest.

**16-23-450. Placing loaded trap gun, spring gun or like device.** It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building or in any place within this State,

and any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment of not less than thirty days nor more than one year or by both fine and imprisonment, in the discretion of the court.

**16-23-470. Tear-gas gun or ammunition.**

(A) It is unlawful for anyone except an authorized law enforcement officer to possess, use, transport, sell, or buy a tear-gas machine or gun, or its parts, or any ammunition, shells, or equipment that may be used in a tear-gas gun or machine. It is lawful for a person for self-defense purposes only to possess, use, transport, sell, or buy a tear-gas machine or gun, or its parts, or ammunition, shells, or equipment for a tear-gas machine or gun, but the capacity of a tear-gas cartridge, shell, or container shall not exceed fifty cubic centimeters nor shall a tear-gas machine or gun have the capability of shooting a cartridge, shell, or container of more than fifty cubic centimeters.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

(C) Except as permitted above, nothing in this section prohibits the purchase, sale, transportation, or use of tear gas for the destruction of insects or rodents if tear gas is not in containers or shells suitable for use in a tear-gas gun, equipment, or machine and if the purchaser has written authority for the purchase and use of tear gas from the county agent of the county in which he resides.

**16-23-480. Manufacture or possession of article designed to cause damage by fire or other means.**

It is unlawful for a person to manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation, or other means. It is unlawful for a person to possess any object or article solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation, or other means.

A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

**16-23-490. Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime.**

(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

(B) Service of the five-year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five-year sentence to run consecutively or concurrently.

(C) The person sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. The five years may not be suspended and the

person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period.

(D) As used in this section, "firearm" means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; "knife" means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

(E) The additional punishment may not be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16-1-60.

**16-23-520. Use, transportation, manufacture, possession, purchase, or sale of teflon-coated ammunition.**

It is unlawful for a person to use, transport, manufacture, possess, distribute, sell, or buy any ammunition or shells that are coated with polytetrafluoroethylene (teflon). A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

**Article 7. Bombs, Destructive Devices, and Weapons of Mass Destruction**

**16-23-710. Definitions. For purposes of this article:**

(1) "Bacteriological weapon" and "biological weapon" mean devices which are designed in a manner as to permit the intentional release into the population or environment of microbiological or other biological materials, toxins, or agents, whatever their origin or method of production, in a manner not authorized by law, or any device, the development, production, or stockpiling of which is prohibited pursuant to the "Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction", 26 U.S.T. 583, TIAS 8063.

(2) "Bomb" includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property. ...

(4) "Building" means any structure, vehicle, watercraft, or aircraft:

(a) where any person lodges or lives; or  
(b) where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is considered both a separate building in itself and a part of the main building.

(5) "Device" means an object, contrivance, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of

serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction.

(6) "Detonate" means to explode or cause to explode.

(7) "Destructive device" means:

(a) a bomb, incendiary device, or any thing that can detonate, explode, or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over-pressure device, or any other device capable of causing damage, injury, or death;

(b) a bacteriological weapon or biological weapon; or

(c) a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

(8) "Detonator" means a device containing a detonating charge used to initiate detonation in an explosive or any device capable of triggering or setting off an explosion or explosive charge including, but not limited to, impact or an impact device, a timing mechanism, electricity, a primer, primer or detonating cord, a detonating cap or device of any kind, detonating waves, electric blasting caps, blasting caps for use with safety fuses, shock tube initiator, and detonating cord delay connectors, or any other device capable of detonating or exploding a bomb, weapon of mass destruction, or destructive device.

(9) "Distribute" means the actual or constructive delivery or the attempted transfer from one person to another.

(10) "Explosive" means a chemical compound or other substance or a mechanical system intended for the purpose of producing an explosion capable of causing injury, death, or damage to property or an explosive containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury, death, or damage to property. Explosives include, but are not limited to, the list of explosive materials published and periodically up-dated by the Bureau of Alcohol, Tobacco and Firearms.

(11) "Hoax device" or "replica" means a device or object which has the appearance of a destructive device.

(12) "Incendiary" means any material that:

(a) causes, or is capable of causing, fire when it is lit or ignited; and

(b) is used to ignite a flammable liquid or compound in an unlawful manner.

(13) "Incendiary device" means a destructive device, however possessed or delivered, and by whatever name called, containing or holding a flammable liquid or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking de-tours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

**(14) "Over-pressure device"** means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in a manner capable of causing death, injury, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

**(15) "Parts"** means a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

**(16) "Poisonous gases"** mean a toxic chemical or its precursors that through its chemical action or properties on life processes, causes death or injury to human beings or other living organisms. However, the term does not include:

**(a)** riot control agents, smoke and obscuration materials, or medical products which are manufactured, possessed, transported, or used in accordance with the laws of this State or the United States;

**(b)** tear gas devices designed to be carried on or about the person which contain not more than fifty cubic centimeters of the chemical; or

**(c)** pesticides, as used in agriculture and household products.

**(17) "Property"** means real or personal property of any kind including money, choses in action, and other similar interest in property. ...

**(19) "Weapon of mass destruction"** means:

**(a)** any destructive device as defined in item (7);

**(b)** any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

**(c)** any weapon involving a disease organism; or

**(d)** any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**16-23-715. Possession, threatened or attempted use of weapon of mass destruction for act of terrorism; penalty.** A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction:

**(1)** in cases resulting in the death of another person, must be punished by death or by imprisonment for life; or

**(2)** in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty-five years nor more than life.

**16-23-720. Intentional detonation of or aiding, counseling or procuring detonation of destructive device; transporting of or possessing components of destructive device; penalties.**

**(C)** A person who knowingly possesses, manufactures, transports, distributes, possesses with the intent to distribute a destructive device or any explosive, incendiary device, or over-pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or a person who possesses parts, components, or materials which when assembled constitute a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than two years nor more than fifteen years. ...

**6-23-730. Hoax device or replica of destructive device or detonator; manufacture, possession or transport of; threat to use;**

**penalties.** A person who knowingly manufactures, possesses, transports, distributes, uses or aids, or counsels or conspires with another in the use of a hoax device or replica of a destructive device or detonator which causes any person reasonably to believe that the hoax device or replica is a destructive device or detonator is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than ten thousand dollars, or both.

**16-23-770. Forfeiture of property used or intended for use in violation of article; storage and destruction; exceptions.**

**(A)** All property used or intended for use in violation of this article and all proceeds derived from, realized from, or traced back to property used or intended for use in violation of this article is contraband and subject to forfeiture. Property subject to forfeiture must be seized by a law enforcement agency and forfeited to the State, a political subdivision of the State, or the seizing law enforcement agency. ...

**(D)** The provisions of this article do not apply to the lawful use of:

**(1)** fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their intended purposes;

**(2)** pesticides which are manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7, Title 2, the federal Insecticide, Fungicide, and Rodenticide Act and the Environmental Pesticide Control Act of 1972;

**(3)** explosives, blasting agents, detonators, and other objects regulated and controlled by the South Carolina Explosives Control Act;

**(4)** ammunition for small arms and firearms;

**(5)** components of ammunition for small arms and firearms;

**(6)** ammunition reloading equipment;

**(7)** the use of small arms propellant when used in war reenactments;

**(8)** firearms, as defined in Section 16-8-10; or

**(9)** fireworks and explosives which are permitted to be sold, possessed, or used under Chapter 35 of Title 23.

**(E)** The provisions of this article do not apply to the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties.

## **Title 23. Law Enforcement and Public Safety**

### **Chapter 31. Firearms**

#### **Article 1. Purchase of Rifles and Shotguns**

**23-31-10. Purchase of rifle or shotgun in contiguous state.** Any resident of this State including a corporation or other business entity maintaining a place of business in this State, who may lawfully purchase and receive delivery of a rifle or shotgun in this State, may purchase a rifle or shotgun in a contiguous state and transport or receive the same in this State; provided, that the sale meets the lawful requirements of each such state, meets all lawful requirements of any Federal statute, and is made by a licensed importer, licensed manufacturer, licensed dealer, or licensed collector.

**23-31-20. Purchase of rifle or shotgun in this State by resident of contiguous state.** A resident of any state may purchase rifles and

shotguns in this State if the resident conforms to applicable provisions of statutes and regulations of this State, the United States, and of the state in which the person resides.

#### **Article 3. Regulation of Pistols**

**23-31-110. Definitions.** When used in this article:

**(a) "Pistol"** means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges.

**(b) The term "dealer"** means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.

**(c) The term "crime of violence"** means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

**(d) The term "fugitive from justice"** means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

**(e) The term "subversive organization"** means any group, committee, club, league, society, association or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

**(f)** The term "conviction" as used herein shall include pleas of guilty, pleas of nolo contendere and forfeiture of bail.

**(g)** The term "division" shall mean the State Law Enforcement Division.

**(h)** The terms "purchase" or "sell" mean to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.

**(i)** The term "person" shall mean any individual, corporation, company, association, firm, partnership, society or joint stock company.

**23-31-130. Retail dealers shall be licensed.** No retail dealer shall sell or otherwise transfer, or expose for sale or transfer, or have in his possession with intent to sell, or otherwise transfer, any pistol without being licensed as hereinafter provided.

**23-31-140. Completion and contents of application prior to purchase of pistol; further restrictions on purchase; persons on active military duty.**

**(A)** A person may not purchase a pistol from a dealer unless he is a resident of this State. For the purpose of this article, the possession of a valid South Carolina driver's license or Department of Motor Vehicles identification card constitutes proof of residency. However, residency is not required of a person who is on active duty in the United States military and who is in possession of a current United States military identification card.

**(B)** For purposes of this section, the purchase of a pistol does not include the redeeming of a pistol by its owner after it has been pledged to secure a loan.

**(C)** No person may purchase a pistol from a dealer unless he is a resident of this State. For

the purpose of this article, the possession of a valid South Carolina driver's license or Department of Public Safety identification card constitutes proof of residency. However, residency is not required of a person who is on active duty in the United States military and who is in possession of a current United States military identification card.

(D) Upon proper completion of the application the dealer must submit the original application to the division, retain a copy for his records, and give a copy to the applicant upon his purchase of a pistol. The application to be submitted to the division must be accompanied by a firearm transaction record properly completed by the purchaser and the dealer.

For purposes of this section, the purchase of a pistol does not include the redeeming of a pistol by its owner after it has been pledged to secure a loan.

**23-31-150. Issuance, duration, conditions and forfeiture of retail dealer's license.** The Division shall grant a license to any person doing business in the State not ineligible to purchase, acquire or possess a pistol or be licensed as a dealer under the provisions of this article. Licenses shall be issued on a form furnished by the Division and be effective for two years from the date of issuance. Licensees shall be authorized to sell pistols at retail as dealers within this State subject to the following conditions, for breach of any of which the license shall be forfeited:

(a) The license or a copy thereof, authenticated by the issuing authority, shall at all times and places of sale be available for inspection or displayed where it can easily be read.

(b) No pistol shall knowingly be sold in violation of any provision of this article nor shall any pistol be sold without clear evidence as to the identity of the purchaser being furnished to the dealer.

(c) The fee for the issuance of such license shall be one hundred dollars and for renewal one hundred dollars every two years. The license fees shall be retained by the division for purposes of defraying the costs of administering the provisions of this article.

(d) Each applicant for a license shall post with the Division a bond in favor of the State with surety in the amount of ten thousand dollars. No bond shall be accepted for filing unless it is with a surety company authorized to do business in this State and conditioned that the principal named therein shall not do any act meriting suspension or revocation of his license under provisions of this article. In lieu of a bond, a cash deposit or a deposit of other securities acceptable to the Division of a value of ten thousand dollars shall be accepted. Any person aggrieved by any act of the principal named in such bond may in an action against the principal or surety therein, or both, recover damages. The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the amount of such bond. The surety on the bond shall have the right to cancel such bond giving thirty days' notice to the Division and thereafter shall be relieved of liability for any breach of condition after the effective date of the cancellation.

(e) In order to insure compliance with the provisions of this article, dealers shall make available for inspection by the chief of the division or his agents, during normal business hours, all pistols in their possession.

(f) Each applicant for a license shall furnish to the Division a current federal firearms license

and is required to maintain that federal firearms license in good standing as a condition of holding a retail dealer license issued under this section.

(g) A breach of any of the above conditions or violations of any provisions of this article by a dealer shall result in forfeiture of license, but the licensee is entitled to reasonable notice and proper hearing in the circuit court of the county in which he is licensed.

**23-31-160. False information or evidence shall not be given.** No person shall give false information or evidence regarding any information or evidence required herein.

**23-31-170. Mortgage, deposit or pledge of pistol.** Only a licensed dealer shall make a loan secured by a mortgage, deposit or pledge of a pistol and the dealer shall keep such records as are required herein. A licensed dealer may mortgage any pistol or stock of pistols but shall not deposit the same with any other person.

**23-31-180. Certain pistols declared to be contraband; forfeiture, seizure, and destruction; disposal restrictions; use for display.**

No licensed retail dealer may hold, store, handle, sell, offer for sale, or otherwise possess in his place of business a pistol or other handgun which has a die-cast, metal alloy frame or receiver which melts at a temperature of less than eight hundred degrees Fahrenheit.

A pistol or other handgun possessed or sold by a dealer in violation of this article is declared to be contraband and must be forfeited to or seized by the law enforcement agency in the municipality where forfeited or seized or to the law enforcement agency in the county where forfeited or seized if forfeited or seized outside a municipality. The weapon must be destroyed by the law enforcement agency which seized the weapon or the law enforcement agency to which the weapon is forfeited. A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined.

However, a law enforcement agency may use the weapon for display purposes after the weapon has been rendered inoperable.

**23-31-190. Penalties; disposition of fines; forfeiture and disposition of pistols.** A person, including a dealer who violates the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

In addition to the penalty provided in this section the pistol involved in the violation must be confiscated. The pistol must be delivered to the chief of police of the municipality or to the sheriff of the county, if the violation occurred outside the corporate limits of a municipality. The law enforcement agencies that receive the confiscated pistols may use them within their department, transfer them to another law enforcement agency, or destroy them. Records must be kept of all confiscated pistols received by the law enforcement agencies under the provisions of this article.

#### Article 4. Concealed Weapons Permit

**23-31-205. Name.** This article may be cited as the "Law Abiding Citizens Self-Defense Act of 1996".

**23-31-210. Definitions.** As used in this article:

(1) "**Resident**" means an individual who is present in South Carolina with the intention of making a permanent home in South Carolina or

military personnel on permanent change of station orders.

(2) "**Picture identification**" means:

(a) a valid South Carolina driver's license; or

(b) an official photographic identification card issued by the Department of Revenue, a federal or state law enforcement agency, an agency of the United States Department of Defense, or United States Department of State.

(3) "**Proof of residence**" means a person's current address on the original or certified copy of:

(a) a valid South Carolina driver's license;

(b) an official identification card issued by the Department of Revenue, a federal or state law enforcement agency, an agency of the United States Department of Defense, or United States Department of State;

(c) a voter registration card; or

(d) another document that SLED may determine that fulfills this requirement.

(4) "**Proof of training**" means an original document or certified copy of the document supplied by an applicant that certifies that he is either:

(a) a person who, within three years before filing an application, has successfully completed a basic or advanced handgun education course offered by a state, county, or municipal law enforcement agency or a nationally recognized organization that promotes gun safety. This education course must be a minimum of eight hours and must include, but is not limited to:

(i) information on the statutory and case law of this State relating to handguns and to the use of deadly force;

(ii) information on handgun use and safety;

(iii) information on the proper storage practice for handguns with an emphasis on storage practices that reduces the possibility of accidental injury to a child; and

(iv) the actual firing of the handgun in the presence of the instructor;

(b) an instructor certified by the National Rifle Association or another SLED-approved competent national organization that promotes the safe use of handguns;

(c) a person who can demonstrate to the Director of SLED or his designee that he has a proficiency in both the use of handguns and state laws pertaining to handguns;

(d) an active duty police handgun instructor;

(e) a person who has a SLED-certified or approved competitive handgun shooting classification; or

(f) a member of the active or reserve military, or a member of the National Guard who has had handgun training in the previous three years.

SLED shall promulgate regulations containing general guidelines for courses and qualifications for instructors which would satisfy the requirements of this item. For purposes of subitems (a) and (b), 'proof of training' is not satisfied unless the organization and its instructors meet or exceed the guidelines and qualifications contained in the regulations promulgated by SLED pursuant to this item.

(5) "**Concealable weapon**" means a firearm having a length of less than twelve inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing except when needed for self-defense, defense of others, and the protection of real or personal property.

**23-31-215. Issuance of permits.**

(A) Notwithstanding any other provision of law, except subject to subsection (B) of this section, SLED must issue a permit, which is no larg-

er than three and one-half inches by three inches in size, to carry a concealable weapon to a resident who is at least twenty-one years of age and who is not prohibited by state law from possessing the weapon upon submission of:

(1) a completed application signed by the person;

(2) one current full face color photograph of the person, not smaller than one inch by one inch nor larger than three inches by five inches;

....(3) proof of residence or if the person is a qualified nonresident, proof of ownership of real property in this State;

(4) proof of actual or corrected vision rated at 20/40 within six months of the date of application or, in the case of a person licensed to operate a motor vehicle in this State, presentation of a valid driver's license;

(5) proof of training;

(6) payment of a fifty-dollar application fee. This fee must be waived for disabled veterans and retired law enforcement officers; and

(7) a complete set of fingerprints unless, because of a medical condition verified in writing by a licensed medical doctor, a complete set of fingerprints is impossible to submit. In lieu of the submission of fingerprints, the applicant must submit the written statement from a licensed medical doctor specifying the reason or reasons why the applicant's fingerprints may not be taken. If all other qualifications are met, the Chief of SLED may waive the fingerprint requirements of this item. The statement of medical limitation must be attached to the copy of the application retained by SLED. A law enforcement agency may charge a fee not to exceed five dollars for fingerprinting an applicant.

(B) Upon submission of the items required by subsection (A) of this section, SLED must conduct or facilitate a local, state, and federal fingerprint review of the applicant. SLED must also conduct a background check of the applicant through notification to and input from the sheriff of the county where the applicant resides or if the applicant is a qualified nonresident, where the applicant owns real property in this State. The sheriff within ten working days after notification by SLED, must submit a recommendation on an application. Before making a determination whether or not to issue a permit under this article, SLED must consider the recommendation provided pursuant to this subsection. The failure of the sheriff to submit a recommendation within the ten-day period constitutes a favorable recommendation for the issuance of the permit to the applicant. If the fingerprint review and background check are favorable, SLED must issue the permit.

(C) SLED shall issue a written statement to an unqualified applicant specifying its reasons for denying the application within ninety days from the date the application was received; otherwise, SLED shall issue a concealable weapon permit. If an applicant is unable to comply with the provisions of Section 23-31-210(4), SLED shall offer the applicant a handgun training course that satisfies the requirements of Section 23-31-210(4)(a). The course shall cost fifty dollars. SLED shall use the proceeds to defray the training course's operating costs. If a permit is granted by operation of law because an applicant was not notified of a denial within the ninety-day notification period, the permit may be revoked upon written notification from SLED that sufficient grounds exist for revocation or initial denial.

(D) Denial of an application may be appealed. The appeal must be in writing and state the basis for the appeal. The appeal must be submitted to the Chief of SLED within thirty days from the date the denial notice is received. The chief shall issue a written decision within ten days from the date the appeal is received. An adverse decision shall specify the reasons for upholding the denial and may be reviewed by the Administrative Law Judge Division pursuant to Article 5, Chapter 23 of Title 1, upon a petition filed by an applicant within thirty days from the date of delivery of the division's decision.

(E) SLED must make permit application forms available to the public. A permit application form shall require an applicant to supply:

(1) name, including maiden name if applicable;

(2) date and place of birth;

(3) sex;

(4) race;

(5) height;

(6) weight;

(7) eye and hair color;

(8) current residence address, or if the applicant is a qualified nonresident, current residence address and where the applicant owns real property in this State; and

(9) all residence addresses for the three years preceding the application date.

(F) The permit application form shall require the applicant to certify that:

(1) he is not a person prohibited under state law from possessing a weapon;

(2) he understands the permit is revoked and must be surrendered immediately to SLED if the permit holder becomes a person prohibited under state law from possessing a weapon;

(3) he is a resident of this State, is military personnel on permanent change of station orders, or is a qualified nonresident; and

(4) all information contained in his application is true and correct to the best of his knowledge.

(G) Medical personnel, law enforcement agencies, organizations offering handgun education courses pursuant to Section 23-31-210(4)(a), and their personnel, who in good faith provide information regarding a person's application, must be exempt from liability that may arise from issuance of a permit; provided, however, a weapons instructor must meet the requirements established in Section 23-31-210(4)(b), (c), (d), (e), or (f) in order to be exempt from liability under this subsection.

(H) A permit application must be submitted in person or by mail to SLED headquarters which shall verify the legibility and accuracy of the required documents.

(I) SLED must maintain a list of all permit holders and the current status of each permit. SLED may release the list of permit holders or verify an individual's permit status only if the request is made by a law enforcement agency to aid in an official investigation, or if the list is required to be released pursuant to a subpoena or court order. SLED may charge a fee not to exceed its costs in releasing the information under this subsection. Except as otherwise provided in this subsection, a person in possession of a list of permit holders obtained from SLED must destroy the list.

(J) A permit is valid statewide unless revoked because the person has:

(1) become a person prohibited under state law from possessing a weapon;

(2) moved his permanent residence to another state;

(3) voluntarily surrendered the permit; or

(4) been charged with an offense that, upon conviction, would prohibit the person from possessing a firearm. However, if the person subsequently is found not guilty of the offense, then his permit must be reinstated at no charge.

Once a permit is revoked, it must be surrendered to a sheriff, police department, a SLED agent, or by certified mail to the Chief of SLED. A person who fails to surrender his permit in accordance with this subsection is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars.

(K) A permit holder must have his permit identification card in his possession whenever he carries a concealable weapon. When carrying a concealable weapon pursuant to Article 4 of Chapter 31 of Title 23, a permit holder must inform a law enforcement officer of the fact that he is a permit holder and present the permit identification card when an officer (1) identifies himself as a law enforcement officer and (2) requests identification or a driver's license from a permit holder. A permit holder immediately must report the loss or theft of a permit identification card to SLED headquarters. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars.

(L) SLED shall issue a replacement for lost, stolen, damaged, or destroyed permit identification cards after the permit holder has updated all information required in the original application and the payment of a five-dollar replacement fee. Any change of permanent address must be communicated in writing to SLED within ten days of the change accompanied by the payment of a fee of five dollars to defray the cost of issuance of a new permit. SLED shall then issue a new permit with the new address. A permit holder's failure to notify SLED in accordance with this subsection constitutes a misdemeanor punishable by a twenty-five dollar fine. The original permit shall remain in force until receipt of the corrected permit identification card by the permit holder, at which time the original permit must be returned to SLED.

(M) A permit issued pursuant to this section does not authorize a permit holder to carry a concealable weapon into a:

(1) police, sheriff, or highway patrol station or any other law enforcement office or facility;

(2) detention facility, prison, or jail or any other correctional facility or office;

(3) courthouse or courtroom;

(4) polling place on election days;

(5) office of or the business meeting of the governing body of a county, public school district, municipality, or special purpose district;

(6) school or college athletic event not related to firearms;

(7) daycare facility or pre-school facility;

(8) place where the carrying of firearms is prohibited by federal law;

(9) church or other established religious sanctuary unless express permission is given by the appropriate church official or governing body; or

(10) hospital, medical clinic, doctor's office, or any other facility where medical services or procedures are performed unless expressly authorized by the employer.

A person who willfully violates a provision of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than one year, or both, at the discretion of the court and have his permit revoked for five years.

Nothing contained herein may be construed to alter or affect the provisions of Sections 10-11-320, 16-23-420, 16-23-430, 16-23-465, 44-23-1080, 44-52-165, 50-9-830, and 51-3-145.

(N) Valid out-of-state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State, provided, that the reciprocal state requires an applicant to successfully pass a criminal background check and a course in firearm training and safety. A resident of a reciprocal state carrying a concealable weapon in South Carolina is subject to and must abide by the laws of South Carolina regarding concealable weapons. SLED shall maintain and publish a list of those states as the states with which South Carolina has reciprocity.

(O) A permit issued pursuant to this article is not required for a person:

(1) specified in Section 16-23-20, items (1) through (5) and items (7) through (11);

(2) carrying a self-defense device generally considered to be nonlethal including the substance commonly referred to as 'pepper gas';

(3) carrying a concealable weapon in a manner not prohibited by law.

(P) A permit issued pursuant to this article is valid for four years. Subject to subsection (Q) of this section, SLED shall renew a permit upon:

(1) payment of a fifty-dollar renewal fee by the applicant. This fee must be waived for disabled veterans and retired law enforcement officers;

(2) completion of the renewal application; and

(3) submission of a photocopy of the applicant's valid South Carolina driver's license or South Carolina identification card.

(Q) Upon submission of the items required by subsection (P) of this section, SLED must conduct or facilitate a local, state, and federal fingerprint review of the applicant. If the background check is favorable, SLED must renew the permit.

(R) No provision contained within this article shall expand, diminish, or affect the duty of care owed by and liability accruing to, as may exist at law immediately before the effective date of this article, the owner of or individual in legal possession of real property for the injury or death of an invitee, licensee, or trespasser caused by the use or misuse by a third party of a concealable weapon. Absence of a sign prohibiting concealable weapons shall not constitute negligence or establish a lack of duty of care.

(S) Once a concealed weapon permit holder is no longer a resident of this State or is no longer a qualified nonresident, his concealed weapon permit is void, and immediately must be surrendered to SLED.

(T) During the first quarter of each calendar year, SLED must publish a report of the following information regarding the previous calendar year:

(1) the number of permits;

(2) the number of permits that were issued;

(3) the number of permit applications that were denied;

(4) the number of permits that were renewed;

(5) the number of permit renewals that were denied;

(6) the number of permits that were suspended or revoked; and

(7) the name, address, and county of a person whose permit was revoked, including the reason for the revocation under Section 23-31-215(J)(1).

The report must include a breakdown of such information by county.

**23-31-217. Effect on Section 16-23-20.** Nothing in this article shall affect the provisions of Section 16-23-20.

#### **Article 5. Use and Possession of Machineguns, Sawed-off Shotguns and Rifles**

**23-31-310. Definitions.** When used in this article:

(a) "**Machine gun**" applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) "**Sawed-off shotgun**" means a shotgun having a barrel or barrels of less than eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than eighteen inches in length.

(c) "**Shotgun**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

(d) "**Sawed-off rifle**" means a rifle having a barrel or barrels of less than sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty-six inches or a barrel or barrels of less than sixteen inches in length.

(e) "**Rifle**" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

(f) "**Antique firearm**" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(g) "**Military firearm**" means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shot-gun which fires only one shot for each pull of the trigger.

**23-31-320. Exceptions to application of article.** The provisions of this article shall not apply to the Army, Navy, or Air Force of the United

States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed-off shotguns or sawed-off rifles, from the United States or from this State and the members of such organizations. Any peace officer of the State or of any county or other political subdivision thereof, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of any state prison, penitentiary, work-house, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or person on duty in the postal service of the United States or any common carrier while transporting direct to any police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed-off shotgun or sawed-off rifle, may possess machine guns, or sawed-off shotguns or sawed-off rifles, when required in the performance of their duties. Nor shall the provisions hereof be construed to apply to machine guns, or sawed-off shotguns or sawed-off rifles, kept for display as relics and which are rendered harmless and not usable.

The provisions of this article shall not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. Section 921 et seq., nor to any common or contract carrier transporting or shipping any machine guns or military firearms to or from such manufacturer if the transportation or shipment is not prohibited by federal law. Any such manufacturer shall furnish to the South Carolina Law Enforcement Division the serial numbers of all machine guns or military firearms manufactured by it within thirty days of such manufacture and shall be subject to the penalties provided in Section 23-31-340 for noncompliance.

**23-31-330. Application and registration of person allowed to possess machine gun or sawed-off shotgun or rifle.**

(A) Every person permitted by Section 23-31-320 to possess a machine gun or sawed-off shotgun or sawed-off rifle, and any person elected or appointed to any office or position which entitles the person to possess a machine gun or sawed-off shotgun or sawed-off rifle, upon taking office, shall file with the State Law Enforcement Division on a blank to be supplied by the division on request an application which is properly sworn. The application must be approved by the sheriff of the county in which the applicant resides or has his principal place of business and include the applicant's name, residence and business address, physical description, whether or not ever charged or convicted of any crime, municipal, state, or otherwise, and where, if charged, and when it was disposed of. The applicant shall also give a description including the serial number and make of the machine gun or sawed-off shotgun or sawed-off rifle which he possesses or desires to possess. The State Law Enforcement Division shall file the application in its office. The division shall register the applicant together with the information required in the application in a book or index to be kept for that purpose, assign to him a number, and issue to him a card which shall bear the signature of the applicant and which he shall keep with him while he has the machine gun or sawed-off shotgun or sawed-off rifle in his possession. This registration must be made on the date application is received and filed with the division. The registration expires on December thirty-first of the year in which the license is issued.

(B) No permit or registration required by the provisions of this section is required where weapons are possessed by a governmental entity which has a significant public safety responsibility for the protection of life or property.

**23-31-340. Penalties.** A person who violates the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

**23-31-350. Article not applicable to antique firearms.** The provisions of this article shall not apply to antique firearms.

**23-31-360. Unregistered possession of machine guns or military firearms by licensed manufacturer.** Machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally possessed by the manufacturer without being registered with the State Law Enforcement Division. The manufacturing firm shall furnish to SLED the serial numbers of all machine guns or military firearms manufactured by it within thirty days of their manufacture and it is subject to the penalties provided in Section 23-31-340 for noncompliance.

**23-31-370. Special limited license for possession, transportation, and sale of machine guns; violations and penalties.**

(a) The South Carolina Law Enforcement Division may issue a special limited license for the possession, transportation, and sale of machine guns in this State to persons: (1) who are authorized representatives of a machine gun manufacturer or dealer engaged in demonstrating and selling them to agencies authorized by law to possess them, or (2) who are engaged in professional movie-making or providing services to professional movie-makers who use machine guns as regulated by this article in the course of creating movie "special effects".

(b) Applications for the special license authorized by this section must be on a form prescribed by the division, duly sworn to, containing the applicant's name, business and residence address, a record of any criminal charges filed against the applicant in the United States for other than traffic law violations and the disposition of the charges, a description of the machine guns to be possessed, transported, or sold in this State, including their make and serial numbers, the sites within the State to which the machine guns will be transported, and such other information the division considers necessary to implement this section.

(c) The division may issue a special license pursuant to this section if it determines that the applicant has not been convicted of any offense other than traffic violations and the applicant clearly qualifies under item (1) or (2) of subsection (a). The special license is valid for a specified period not to exceed six months which must be stated on the license.

(d) Any person who knowingly and willfully makes any false statement for the purpose of

obtaining the special license or who violates its terms, in addition to any other penalty provided by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than two years, or both.

#### **Article 6. Using A Firearm while Under the Influence of Alcohol or A Controlled Substance**

**23-31-400. Definitions; unlawful use of firearm; violations.**

(A) As used in this article:

(1) "Use a firearm" means to discharge a firearm.

(2) "Serious bodily injury" means a physical condition which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(B) It is unlawful for a person who is under the influence of alcohol or a controlled substance to use a firearm in this State.

(C) A person who violates the provisions of subsection (B) is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than two years.

(D) This article does not apply to persons lawfully defending themselves or their property.

#### **Article 7. Local Regulations**

**23-31-510. Prohibition against regulation of certain matters. No governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:**

(1) the transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things; or

(2) a landowner discharging a firearm on the landowner's property to protect the landowner's family, employees, the general public, or the landowner's property from animals that the landowner reasonably believes pose a direct threat or danger to the landowner's property, people on the landowner's property, or the general public. For purposes of this item, the landowner's property must be a parcel of land comprised of at least twenty-five contiguous acres. Any ordinance regulating the discharge of firearms that does not specifically provide for an exclusion pursuant to this item is unenforceable as it pertains to an incident described in this item; otherwise, the ordinance is enforceable.

**23-31-520. Matters subject to regulation.**

This article does not affect the authority of any county, municipality, or political subdivision to regulate the careless or negligent discharge or public brandishment of firearms, nor does it prevent the regulation of public brandishment of firearms during the times of or a demonstrated

potential for insurrection, invasions, riots, or natural disasters. This article denies any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest.

**23-31-600. Retired personnel; identification cards; qualification for carrying concealed weapon.**

(A) For purposes of this section:

(1) "Identification card" is a photographic identification card complying with 18 U.S.C. Section 926C(d).

(2) "Qualified retired law enforcement officer" means any retired law enforcement officer as defined in 18 U.S.C. Section 926C(c) who at the time of his retirement was certified as a law enforcement officer in this State and who was trained and qualified to carry firearms in the performance of his duties.

(B) An agency or department within this State must comply with Section 3 of the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. Section 926C, by issuing an identification card to any person who retired from that agency or department and who is a qualified retired law enforcement officer. If the agency or department currently issues credentials to active law enforcement officers, then the agency or department may comply with the requirements of this section by issuing the same credentials to retired law enforcement officers. If the same credentials are issued, then the agency or department must stamp the credentials with the word "RETIRED."

(C)(1) Subject to the limitations of subsection (E), a qualified retired law enforcement officer may carry a concealed weapon in this State if he possesses an identification card issued pursuant to subsection (C) along with a certification that he has, not less recently than one year before the date the individual is carrying the firearm, met the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(2) The firearms certification required by this subsection may be reflected on the identification card or may be in a separate document carried with the identification card.

(D) The restrictions contained in Sections 23-31-220 and 23-31-225 are applicable to a person carrying a concealed weapon pursuant to this section.

(E) The agency or department may charge the retired law enforcement officer a reasonable fee for issuing the identification card and must provide the retired officer with the opportunity to qualify to carry a firearm under the same standards for training and qualification for active law enforcement officers to carry firearms. However, the agency or department, as provided in 18 U. S. C. Section 926C(c)(5), may require the retired officer to pay the actual expenses of the training and qualification.

[Current through 2007 Regular Session]

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## **SOUTH DAKOTA S.D. CODIFIED LAWS**

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### **Title 7. Counties**

**7-18A-36. Ordinances restricting firearms, ammunition, or their component prohibited**

**and void** No county may pass any ordinance that restricts possession, transportation, sale, transfer, ownership, manufacture or repair of firearms or ammunition or their components.

Any ordinances prohibited by this section are null and void.

### **Title 8. Townships**